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THE

WORKS

OF

WILLIAM H. SEWARD

EDITED BY

GEORGE E. BAKER

"Nature and Laws would be in an ill case, if Slavery should find what to say for itself, and Liberty be mute; and if tyrants should find men to plead for them, and they that can waste and vanquish tyrants, should not be able to find advocates." MILTON.

IN THREE VOLUMES

VOL. I

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PREFACE.

In this collection of Mr. Seward's Works, it is intended to present the public, not only with his more elaborate speeches and writings, but also with his occasional and unstudied efforts. The principles and measures of public policy, which he has maintained, receive as clear an illustration from the latter class of his productions, as from his more systematic and finished performances. They are, accordingly, important, at a time when the political views of Mr. Seward have become the subject of discussion, in every quarter of the Union.

It has often been regretted that so few of the speeches of the eminent men of a former age have been preserved. The history of our own country, especially, has suffered from this neglect. We search in vain for the speeches even of James Otis, which, in the words of one of his contemporaries, "breathed the breath of life into this nation." The facilities of the present day leave no excuse for a similar neglect in regard to our own orators and statesmen.

The Editor of these volumes, though by no means unconscious of his slight qualifications for so important a task, has attempted to collect and prepare for publication the following works of William H. Seward. A desire to aid in disseminating the doctrines and principles they contain, as well as to

preserve them in a permanent form, must plead his apology. For a number of years, it has been his wish, to bring these works before the public. He has only waited for the time, when they could be produced without exciting a suspicion of personal or partisan objects. That time, in his opinion, has now arrived.

It is, however, perhaps too much to expect, even now, a candid hearing from all parties. "Nothing," says Mr. Seward, in one of his letters, "that I can do or say, or that can be said or done by my friends, is suffered to pass without exciting alarms lest it may have an ambitious design that I almost despise."

To the friends of republican principles and of the claims of justice and freedom everywhere, the Editor believes these volumes will be welcome, and to such they are respectfully dedicated. To the friends of Mr. Seward, also, they will be acceptable, as a complete refutation of the various misrepresentations of his acts and opinions, current in the community, supplying a want long felt and frequently expressed. To many of these friends, the Editor is already indebted for assistance and encouragement in his undertaking, for which, he avails himself of this place to express his acknowledgments.

The difficulty of preparing a select edition of Mr. Seward's works was felt at the outset, and after a full view of the matter, it was determined to embrace every thing of which there had been any public record. Ample limits, as it was thought at the time, were accordingly assigned for the work. But the extraordinary amount of interesting and valuable matter that presented itself for publication required a modification of the original plan. It is therefore proper to say, that this collection does not include all of Mr. Seward's productions. Those, however, which have been omitted, were comparatively of local and temporary importance, and, in many cases, were too imperfectly reported for publication. At the same time, nothing

has been left out of the edition on account of any peculiar sentiment or opinion it expressed; but, on the contrary, every thing which has been particularly obnoxious to controversy has been carefully included.

The Memoir which follows, though written with heartfelt admiration of the subject, has constantly aimed to avoid indiscriminate eulogy, and to present a simple but complete record of Mr. Seward's life.

The Speeches in the Senate of New York contained in this volume, while they will serve to show the first exercise of that power of debate, which now in its full development excites an interest throughout the country, will give the reader a fresh view of many important political questions of State and National policy.

The Speeches and Debates in the Senate of the United States form a complete record of Mr. Seward's efforts in that body down to the close of the XXXIId Congress. Several speeches delivered after the first volume of these works had gone to press, will be found in the third volume.

The Forensic Arguments in this volume include Mr. Seward's pleas in the case of J. Fenimore Cooper vs. Greeley & McElrath; in defence of William Freeman; in the case of Jones vs. Van Zandt, under the Fugitive Slave Law of 1793; in the case of Many vs. Treadwell, a Patent case; and in defence of Abel F. Fitch and others, in the celebrated Railroad Trial at Detroit. Several others, possessing almost equal interest, had been selected for a place in the works, but the limits already prescribed made it necessary to omit them. Among these may be named an argument in the case of Wilson vs. Rousseau,* involving the merits of the Woodworth Patent, and an Opinion delivered by Mr. Seward while a member of the Court of Errors, in the case of Parks vs. Jackson.†

* Blatchford's Circuit Court Reports, Vol. I. page 8.

† Wendell's Reports, Vol. IX. page 456.

Three Engravings accompany these volumes—a Portrait of Mr. Seward—his Birth-Place—and his Residence at Auburn.

The portrait is a faithful copy of a daguerreotype taken for the purpose.

The view of Mr. Seward's early home, in the second volume, was engraved from a sketch, recently made, of the old house which is still standing in the village of Florida, in Orange County.

The view of his present residence at Auburn, in the third volume, is from a daguerreotype taken in mid-winter. A brief description of the mansion and grounds will be found in the Preface to that volume.

The Editor.

Williamsburgh, L. I., *March* 1, 1853.

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BIOGRAPHICAL MEMOIR

OF

WILLIAM H. SEWARD.

MEMOIR.

The ancestors of William Henry Seward were of Welsh extraction. The first of that name in America emigrated from Wales during the reign of Queen Ann, and settled in Connecticut. A branch of the family, from which Mr. Seward is descended, removed to Morris Co., N. J., about the year 1740. His paternal grandfather, John Seward, resided in Sussex Co., in that state, where he sustained a high reputation for enterprise, integrity and ability. On the breaking out of the Revolution, he became a prominent leader of the whig party, and on more than one occasion during the long struggle, was engaged in active service. He died in 1799, leaving a family of ten children. His son, Samuel S. Seward, received an academic and professional education, instead of a share in the paternal inheritance. Having completed his studies, he established himself in the practice of medicine in his native place, and soon after became connected in marriage with Mary Jennings, the daughter of Isaac Jennings, of Goshen, New York.

Removing to Florida, a village in the town of Warwick, in Orange Co., N. Y., in the year 1795, he combined a large mercantile business with an extensive range of professional practice, each of which he carried on successfully for the space of twenty years. He retired from active business in 1815, and devoted himself to the cultivation of the estate, of which, by constant industry and economy, he had become the owner. Dr. Seward was a man of more than common intellect, of excellent business talents, and of strict probity. After his withdrawal from business, he was in the habit of lending money to a considerable extent among the

farmers in his neighborhood; and it is said that no man was ever excused from paying the lawful interest on his loans—that no man was permitted to pay him more than that interest—and that no man who paid his interest punctually was ever required to pay any part of the principal. He was a zealous advocate of republican principles, and exerted a leading influence in the affairs of the party. In 1804, he was elected to the legislature, and during the continuance of the republicans in power, he was never without one or more offices of public trust. Although not a member of the legal profession, he was appointed First Judge of Orange County, in 1815, which office he held for seventeen years. His exercise of the judicial functions was marked by discretion, impartiality, and promptness, and he is remembered to this day as one of the best judges the county ever had. After a visit to Europe, he lived in the enjoyment of universal respect until 1849, when he died in a ripe old age. Dr. Seward was the friend of religion, education, and public improvement. He founded the "S. S. Seward Institute," at Florida, an excellent high school for young persons of both sexes. He endowed this seminary with a permanent fund of $20,000, and continued its steadfast friend until the close of his life.

The wife of Dr. Seward was Mary Jennings, whose family had emigrated from Ireland at an early day. She was a woman of a clear and vigorous understanding, with singular cheerfulness of temper, and while devoted with untiring industry to the interests of her family, was a model of hospitality, charity, and self-forgetfulness. She died in 1843.

The subject of this memoir never forgot that he had Irish blood in his veins. This fact serves to explain, in part, the strong attachment he has always cherished for the Irish population of our country. While travelling through Ireland in 1833, his indignation was greatly aroused by the sight of the oppressions inflicted on the people by the British Government. He ascribed a large share of the miseries of that unhappy country to its political mismanagement, and especially to the annihilation of its parliament, by the act of union. In writing home from Ireland, he expresses himself in the following terms:

"But all this glory has departed. The very shadow, (and for a long time the Irish Parliament was but the shadow) of independence has vanished; Ireland has surrendered the individuality of her national existence, to share, like a younger sister, that

of England. The walls of the parliament house remain in all their primitive grandeur, to reproach the degeneracy of her statesmen. Whilst traversing its apartments, I reverted to the debate when the degenerate representatives surrendered their parliament; and I thought that had I occupied a place there, I would have seen English armies wade in blood over my country, before I would have assented to so disgraceful an union. Something might have been spared, after the deed was consummated, to the wounded pride of the Irish people. The parliament house ought to have been closed, and left in gloomy solitude, a monument to remind the people that they once had a country. But this was too great a concession for the economy of the English administration of affairs in Ireland. They who build palaces and monuments with a profuse hand, on the other side of the channel, sold the Irish Capitol, and it was forthwith converted into a hall for money-changers. I confess that overleaping all the obstacles which are deemed by many well-wishers of Ireland insurmountable, I wish the repeal of the union. I will not believe that if relieved of that oppressive act, she does not possess the ability to govern herself."

In a private letter, written by Mr. Seward in 1840, to a gentleman who had taken strong exceptions to his sentiments in relation to Irishmen, the following passage occurs, in regard to the Irish lineage of his mother. After defending the character of the Irish from some severe charges made by his correspondent, and alluding to their many virtues, he says:

"If this confession of faith seems strange to you, permit me to explain that I could not believe otherwise, without doing dishonor to a mother eminent for many virtues, and to the memories of humble ancestors, whose names will not be saved from obscurity by the record of any extraordinary vices."

William Henry Seward was born in Florida, May 16th, 1801. The house in which his parents then resided is still standing; but the old-fashioned village church and school-house, where his youthful feet were wont to tread, have given place to more modern structures. A venerable forest-tree on the ancient homestead still overshadows a clear, bubbling spring of water, which William was in the habit of frequenting in his school-boy days, with his books, for the purpose of reading and study in its cool and pleasant retirement. His boyhood is well remembered by the aged inhabitants of his native village. They love to recall their predictions of the future eminence of the studious lad, whose diligence and zeal had already attracted their attention. The colored servant, then a slave of his father's, who led him in infancy, and shared his juvenile sports, still lives to rejoice in the bounty of her young companion, who has given a comfortable home for her old age, in memory of their early attachment.

The subject of our narrative entered upon life amidst external circumstances adapted to cherish and develope the higher elements

of his nature. The local scenery of Florida is scarcely surpassed in the country for beauty and magnificence. On each side, mountains of impressive grandeur rear their blue summits into the skies, while the broad and fertile valleys, watered by numerous rivulets and miniature lakes, enriched by genial and appropriate culture, and smiling in joyous abundance, complete the majestic and lovely panorama. The people of Florida, unlike the inhabitants of most other towns in that part of the state, were originally emigrants from New England. They were accordingly imbued with much of the stern and lofty spirit of the Puritans, while their descendants still retained many of their habits and feelings. Brought up amidst such sublime and ennobling scenes of nature—inheriting from a worthy ancestry the purest sentiments of honor and patriotism—imbibing, with his mother's milk, the love of truth, freedom, and equality,—the mind of young Seward early received a powerful impulse towards the career of beneficent greatness, which has amply fulfilled the prophetic anticipations of his youthful associates and admirers.

One of the first acts remembered by the friends of young William Henry, was in no small degree significant of his juvenile tendencies. He ran away *to* school—most truants run in the opposite direction. His taste for books was displayed at an early age. They were his favorite companions, and he was seldom seen without a volume in his hands. His thirst for knowledge, once nearly cost him his life. When about twelve years of age, returning near nightfall from a pasture on his father's farm, driving home the cows, he read a book as he walked, giving an occasional look to his charge, that was travelling quietly before him. A party of boys espied the abstracted herdsman, and disturbed his studious reveries with a volley of small stones. Resolved not to be disturbed in his reading by the missiles of his thoughtless companions, he turned his back towards them, and walked backwards with his eye intently fixed upon his book. In a short time, he insensibly diverged from the path, and missing the bridge over a small creek, was thrown into the water. An elder brother, who had witnessed the accident, drew him from the stream in a state of unconsciousness, and he was fortunately restored without serious injury.

His precocious intellect, and his docile, cheerful disposition, led his parents to decide on giving him a superior education to that

received by the other members of the family. The common school system had not yet been established in the state of New York, and he attended several different schools in the vicinity of his father's residence, until the age of nine years. At this period, he was sent to Farmers' Hall Academy, at Goshen, which then boasted of having had the celebrated Aaron Burr and Noah Webster among its pupils. He pursued his studies at this seminary, and at an academy afterwards established in Florida, until the year 1816. He was now but fifteen years of age, when he was presented for admission to Union College, Schenectady. The thin, pale, sandy-visaged boy was found qualified for the junior class, but on account of his extreme youth was persuaded to enter the sophomore.

The college career of young Seward, as related by his contemporaries, gave brilliant indication of the rare qualities for which he has since become distinguished. The traits of the future legislator and statesman were foreshadowed in the character of the modest youth during his period of academic retirement. Even then he displayed the manly originality of conception—the sturdy independence of purpose—the firm adherence to his convictions of right—the intrepid assertion of high moral principles—the careful examination of a cause before appearing in its defence—the sympathy with the weak and oppressed—and the intellectual vigilance and assiduity in the pursuit of truth,—which have formed such conspicuous and admirable features in his public career.

His favorite studies in college were rhetoric, moral philosophy, and the ancient classics. It was his custom to rise at four o'clock in the morning, and prepare all the lessons of the day. At night, while the other students were engaged in getting ready the exercises of the next morning, he devoted his leisure to general reading, and literary compositions for class declamation or debates in society meetings.

In the year 1819, Seward, who was then in the senior class, and in the eighteenth year of his age, withdrew from college for about a year, passing six months of the time as a teacher at the south. The spectacle of slavery could not fail to make a deep impression on his mind. He witnessed scenes which aroused him to reflection on the subject, and produced the hostility to every form of oppression, which has since become ingrained in his character.

One of the many incidents which occurred to him may be related in this place.

While travelling in the interior of the state, he approached a stream spanned by a dilapidated bridge, that had become almost impassable. He forded the river with no little difficulty, and met on the opposite side a negro woman with an old blind and worn-out horse, bearing a bag of corn to mill. The poor slave was in tears, and manifested great distress of mind. She was afraid to venture on the bridge, and the stream seemed too rapid and violent for the strength of her horse. She was reluctant to return to her master, without fulfilling her errand, being fearful of punishment. The heart of the young northerner was moved He went to her assistance, and attempted to lead the horse across the bridge. But the wretched beast was not equal to the effort He made a false step, and falling partly through, became wedged in among the plank and timbers. Seward tried in vain to extricate him. Despairing of success, he mounted his own horse, rode to the master's residence, and informed him of the accident, and attempted to excuse the slave. In return for his kindness, he was met with a volley of imprecations on himself, the slave, the horse, the bridge, and all parties and things concerned. His disgust at this adventure taught him a lesson of wisdom, which he never forgot.

Returning to college in 1820, he found the students in a state of great excitement. They had hitherto been divided into two literary societies, the Philomathean and the Adelphic, between which an earnest, but not unfriendly rivalry subsisted. The former was the most popular with the students, while the latter claimed the most diligent scholars. Young Seward was a member of the Adelphic, and entered into the interests of the society with characteristic zeal. During his absence, some twenty or thirty students from the southern states had left Princeton College and entered Union. These attached themselves to the Philomathean Society, giving it a great superiority in numbers over its rival. Questions soon arose in the society, on which the members divided geographically. The southern students were left in a minority, and obtaining a charter from the college faculty, organized a third society called the Delphian Institute. Their secession weakened the Philomathean, and was generally regarded by the older members of the rival society as a triumph on their side.

The younger Adelphics, however, took a different view, favoring the Philomatheans, on the ground that the secession was factious and sectional. Seward, whose experience at the south, and popularity with all classes in college, served to qualify him for the office, virtually became umpire between the two parties. After an impartial hearing of the question, he decided in favor of the Philomatheans, and against the Delphian Institute—thus siding with the sophomores and freshmen, in opposition to the views of his own classmates. He thereby incurred no small odium. The faction, which he had condemned, caused him to be arraigned, with a view to his expulsion from the Adelphic Society. The members resolved themselves into a court, while a prominent member of his own class acted as public prosecutor. Seward conducted his own defence. After the testimony was completed, he summed up the merits of the case, closing a powerful argument with a thrilling recital of his course throughout the controversy. Declaring that he was indifferent to what might be said of him by the public prosecutor—that he had no wish to know who voted for and who against him—and that he would not embarrass the vote of any member by his presence, or by inquiry about his vote at any time afterward—he abruptly left the chamber in which the trial was held. In half an hour, the rush of students from the hall showed that the case was decided. Soon, his room was crowded with sophomores and freshmen, ardent with victory, and loud in congratulations that the prosecution had been voted down. The cause of law and order was sustained against the seceders, and the integrity of the union in Union College fully vindicated.

There was still another trial in college for the young student. Three commencement orators were to be appointed by the Adelphic Society. This appointment was deemed the highest college honor. Seward was a prominent candidate. His scholarship, his eloquence, and his character presented equally strong claims in his favor. But the hostile faction among the friends of the Delphian Institute, established a vigorous opposition. An earnest canvass was maintained for several weeks. No pains were spared to defeat the election of Seward. The choice was at length made, and he gained a decided triumph. The subject of his oration was, "The Integrity of the American Union." This was a chaste and manly performance, replete with vigorous sense

and patriotic feeling. It was listened to with enthusiasm by an intelligent audience, and called forth warm commendations in the public prints.

Seward graduated among the most distinguished scholars in his class. He shared his academic honors with several, who have since arisen to eminence in different walks of literature and public life. Of these, we need only mention the names of Hon. William Kent, who inherits the legal mind and rare attainments of his father, the celebrated chancellor; Rev. Dr. Hickok, now vice-president of Union College, and as an erudite and profound metaphysician, without an equal among American scholars; and Rev. Tayler Lewis, Professor of Greek in Union College, distinguished no less as an adroit and energetic controversialist, than as a classical scholar of consummate accomplishments.

An incident, showing his standing in the college, and his early development of talent, was thus described by a public journal, many years since:

"The year 1820 was, as our readers will remember, the epoch of the great contest between Tompkins and Clinton. The interest excited by this struggle pervaded all classes and ages of the community, and it was not in the glowing temperament of William H. Seward to remain neutral. He was naturally from his education and early association, on the side of Tompkins, and his zeal was quickened by personal intercourse with this amiable and fascinating man, with whom to have an interview with an individual was to acquire and fix a friend. Seward was appointed to address the vice-president on his visit to Schenectady on behalf of the young republicans of the college. His speech was so much above the common run of political harangues, as to excite general and lasting interest. He lived in the remembrance of Daniel D. Tompkins, until he himself ceased to live; and his friends will recollect the fervent kindness with which he was wont to recur to this eloquent and generous effort of his youthful champion."

The relations of young Seward with Dr. Nott, the venerable and excellent President of Union College, were intimate and cordial, throughout his academic course, and have continued to be of affectionate confidence to the present time. It is believed that Mr. Seward has seldom acted on any important public question, without availing himself of the experience and sagacity of his venerated friend, whose counsels, we need not say, have always been on the side of nobleness and humanity. Nor, we may add, has Mr. Seward failed to preserve the attachment of his early friends. The companions of his school and college days, as well as those of his professional life, have ever been among his foremost supporters, as a public man. And he never forsakes

a friend or a cause, that he has once espoused. No reproach can shake his fidelity to objects, of whose worth he has become persuaded.

Soon after taking his degree at Union College, Mr. Seward entered the office of John Anthon, Esq., of the city of New York, as a student at law. He carried the habits of early rising and faithful application, which he had maintained during his college life, into his professional studies. He thoroughly mastered every elementary book which was put into his hands, making a written analysis of its contents. Completing his legal preparation with John Duer and Ogden Hoffman, Esquires, in Goshen, N. Y., he was admitted to the bar of the Supreme Court at Utica in 1822. For six months previous to his admission he had been associated in practice with Mr. Hoffman.

In January, 1823, Mr. Seward took up his residence in Auburn, and formed a connexion in business with the Hon. Elijah Miller, a distinguished member of the legal profession, and at that time first Judge of Cayuga county. Judge Miller, who had acquired a competency in a large and successful practice, was desirous of retiring from active professional pursuits, and discovering signs of great promise in young Seward, took him into his confidence, and proved a devoted and efficient friend.

Mr. Seward in 1824 married his youngest daughter, Frances Adeline Miller. As this lady is still living, we can only say that the connection has been a singularly fortunate one in all respects. Four children compose their family; Augustus, a lieutenant in the U. S. Army, Frederick, a promising young lawyer, and a boy and girl yet in childhood. One daughter, "fondly loved," was therefore, perhaps, "early lost."

The town of Auburn, which Mr. Seward selected as a residence, is in the heart of one of the most fertile and delightful regions in central New York. Its growth has been rapid and healthful. Within a few years the primeval forest has given place to a populous city. Its inhabitants are distinguished for their intelligence, enterprise and refinement. Free from the pride of wealth and the pretensions of aristocracy, they present an attractive example of genuine republican equality. In some degree these characteristics are no doubt due to the influence of Mr. Seward and his estimable family. During a residence of more than thirty years, he has won the unqualified respect and confidence of his townsmen. Moving

in the highest circles of society, he has never avoided friendly intercourse with the most obscure and lowly. The patron of struggling merit—cherishing a deep interest in all social and philanthropic movements—watchful to aid the unfortunate and forsaken—and ever ready to devote his time, his talents, and his pecuniary means to the defence of the wronged and oppressed of every caste and color—he has gained the lasting gratitude and love of the people with whom, for over a quarter of a century, he has lived as a neighbor and fellow-citizen.

Although free from all taint of sectarianism, Mr. Seward cherishes a strong attachment to the Protestant Episcopal Church; of which he became a member in 1837. He has been frequently called to attend ecclesiastical conventions of that body. With his devotion to the cause of public improvement, he has been the patron of churches, schools, and benevolent institutions, liberally contributing his money for their support, and his counsels for their direction.

After establishing himself in Auburn, Mr. Seward became interested in the military affairs of the neighborhood, and was soon honored with various military offices. Accepting the colonelcy of a regiment, he acquired wide distinction and still higher promotion by his zeal and discipline. Without personal military ambition, he was an ardent friend of a well-regulated militia system for the preservation of order and the defence of the country. He was an excellent tactician, and an accomplished commander, while his winning qualities as a man secured the friendship of all around him, who were engaged in the same department of public service.

From the commencement of his practice as a lawyer, Mr. Seward was always in the habit of arguing his own cases, instead of employing older counsellors, as is often done by young advocates. In the management of a case he sparingly refers to the authority of recorded decisions, but stating the general principles of law applicable to the question, and arranging the facts in the simplest order, enforces his arguments by *a priori* reasonings, and shows the basis of his position in natural equity. As a professional rule, he gives his aid to a weaker party against a stronger, even without compensation, whether his client be right or wrong; but if a stronger party claims his services against a weaker, he does not engage in the suit without a clear conviction of its justice, what-

ever be the compensation. During the whole course of his practice he has never been known to act for a man against a woman; and was never but once engaged in a cause against the accused; and that was an instance of extreme outrage by a man upon a young woman.

The legal career of Mr. Seward is illustrated with no less justice than vigor in the following sketch of his early professional life, written several years since for one of the periodicals of the day.

"The practice of the law in the country must not be estimated by the practice in the city. Each has its own advantages and difficulties; it is the peculiarity of the former, that it at once brings to the test, and to the public view, the intrinsic qualities of the man. The crowded bar—the long deferred opportunity—the deference to age and experience—the overshadowing reputation of the seniors of the profession, and the innumerable natural or conventional impediments, which so long keep back, and so often depress the young aspirant with us, are felt in a very mitigated degree in the interior The candidate for distinction is there summoned at once to the arena: '*naked steel is around him;*' he is thrown upon his own talents, energies and resources, and he stands and falls as in his native and unaided strength. To have stood this trial successfully, and after eleven years of arduous labors to have risen to the very foremost rank of his profession, as did Mr. Seward, is in itself an unerring indication of the high character of the object of these remarks. In all our courts, and in causes of every description, his talents have been exercised and admired. He has stood forward and distinguished himself with such men as John C. Spencer, Joshua A. Spencer, Albert H. Tracy, and their contemporaries of the West, for whom competition if not pre-eminence may be challenged with the *Athletes* of the Bar in any other section of the State, or of the country. Property, liberty and life have been committed to the integrity and ability of 'this young man of thirty-three,' and he has never faltered in his trust, nor failed in an emergency, nor left unfulfilled an expectation."

His most formidable competitors at the Auburn Bar during the commencement of his practice, were Hon. John M. Hurlbut and William Brown, Esqs. Both these distinguished men were accomplished scholars, erudite jurists and powerful advocates. At this time they were in the dazzling flush of professional success. The brilliancy of their fame threw most of their rivals into the shade. Many excellent members of the bar had been deterred by their eminence from attempting to vie with them in the courts. But upon a man like Mr. Seward their influence was of a contrary nature. Their intellectual predominance only aroused his emulation; nor did he suffer by the comparison. Possessing a native independence of mind, he was early accustomed to original thought. This habit was strengthened by severe discipline. Attaching a due value to the suggestions of others, he still relied upon himself. Connected with this trait of character, was a rigid habit of indus-

try; he studied while others slept. The time which most men give to recreation he devoted to strenuous toil. With such qualifications, Mr. Seward soon entered upon an extensive and successful practice. His fame grew with his years, until he fills a sphere which is surpassed in brilliancy and importance by that of few of his contemporaries, incontestibly ranking with the first lawyers of the Union.

The attention of Mr. Seward was early drawn to political affairs. His father was an ardent champion of the Jeffersonian democracy. The traditionary instincts and early prepossessions of the son were strongly in favor of the same principles. Mr. Seward accordingly, sympathised with the democratic party, believing that it embodied the spirit of popular freedom to a greater extent, than any other party of the day. He was early undeceived by experience. Discovering that under the pretence of democracy the leaders of the party were bent on personal interests, irrespective of the rights of humanity and the public good, he left them at once and forever. He has attached but slight importance to mere party names. The diffusion of genuine republican sentiments among the people, and their practical realization in the institutions and laws of his country, have been the leading objects of his political life.

Mr. Seward first had occasion to express his convictions on the subject of slavery during the protracted struggle on the admission of Missouri into the Union. He perceived, at that early period, the subserviency to Southern influence and dictation, which prevailed in the democratic party in the state of New York. From that day to the present his life has been devoted to the principles of liberty. In his view, freedom is national and slavery sectional. With him the purpose of the Union is to establish the blessings of equality, justice and humanity; not to enlarge the area of bondage and oppression. His hostility to slavery has not been the result of policy, but of principle—of the strongest conviction of its inherent injustice, and its tendency to corrupt and destroy the noblest institutions of the country. His rule of action on the subject has been uniform from the commencement of his political career. He has never suffered the fear of consequences to silence his voice in defence of freedom, when any practical benefit was at stake; but he has strictly avoided every act that was adapted to inflict a needless wound upon an opponent, or to foment an unprofitable excitement.

In his measures with regard to slavery, Mr. Seward has been no fanatic. Detesting the institution, he has waged against it an honorable warfare. But he has refrained, with scrupulous care, from infringing on the constitutional rights of slave holders, or depriving them of any privilege to which they are entitled by law. This is the extent of his concessions. He refuses to accord any advantage beyond legal enactment to an institution which violates the first principles of natural right.

His position on this subject was clearly defined in his California speech.*

"I feel assured that slavery must give way, and will give way, to the salutary instructions of economy, and to the ripening influences of humanity; that emancipation is inevitable, and is near; that it may be hastened or hindered; and that whether it be peaceful or violent depends upon the question whether it be hastened or hindered; that all measures which fortify slavery or extend it, tend to the consummation of violence; all that check its extension and abate its strength, tend to its peaceful extirpation. But I will adopt none but lawful, constitutional, and peaceful means, to secure even that end; and none such can I or will I forego. Nor do I know any important or responsible political body that proposes to do more than this. No free state claims to extend its legislation into a slave state. None claims that Congress shall usurp power to abolish slavery in the slave states. None claims that any violent, unconstitutional or unlawful measure shall be embraced. And on the other hand, if we offer no scheme or plan for the adoption of the slave states, with the assent and co-operation of Congress, it is only because the slave states are unwilling as yet to receive such suggestions, or even to entertain the question of emancipation in any form."

Mr. Seward's first public action of a political character was in 1824. In October of that year, he drew up the Address of the Republican Convention of Cayuga County to the people.† In this document, he gave a brief history of the origin and designs of the Albany regency—a clique of political leaders, which once exerted a great and most injurious influence in the state of New York. He exposed its system of machinery—its opposition to the electoral law, placing the appointment of presidential electors in the hands of the people, although solemnly pledged to its support—and its intrigues to prevent the election of John Quincy Adams to the presidency, and to secure the ultimate election of Martin Van Buren. The opposition to the Albany regency, thus boldly commenced by the young politician, was finally crowned with complete success. The sources of its influence were destroyed, and the power, which had been centralized in its organization, was restored to the possession of the people.

* See Vol. I. p. 51. † See Vol. III, p. 335.

On the 4th of July, 1825, Mr. Seward delivered an anniversary oration at Auburn.* The Missouri Compromise and the Tariff of 1824 had recently elicited threats of nullification at the south. In this oration, Mr. Seward took the same position on several important political questions, which he has maintained to the present day. He argued the capacity of the government for the extension of empire, asserting the perpetuity of the Union on the same grounds that have been advanced in his later productions. Announcing his devotion to the great principles of emancipation, he insisted that the United States should be a "city of refuge" for the oppressed and down-trodden of every nation.

In 1826 and 1827, the Greek revolution awakened a general sympathy in the United States. A meeting of citizens of Auburn was held in February, 1827, for the purpose of rendering aid to the struggling Greeks. Mr. Seward was invited to deliver a speech on this occasion.† The subject was congenial to his feelings, and he gladly consented to the request. With characteristic eloquence, he defended the cause of liberty in other lands—asserting its claims on American sympathy, in the same line of argument which he afterwards reproduced in behalf of Ireland and Hungary. His vigorous and glowing appeal was met by the people to whom it was addressed with a munificent liberality which was elsewhere without a parallel.

In July, 1828, Mr. Seward was invited by the members of the Adelphic Society of Union College, to deliver a eulogy on David Berdan,‡ a member of the society, who died on his passage from London to Boston, July 20, 1827. It was a sincere and eloquent tribute to the memory of an esteemed companion and friend. The monument erected to young Berdan, still forms an interesting object to those who visit the college grounds at Schenectady.

The year 1828 is distinguished as the period when the young men of our country first made an effort to exert a personal influence on national politics. A convention of the young men of New York in favor of the re-election of John Quincy Adams to the presidency was held at Utica, on the 12th of August. It was one of the largest political conventions ever assembled in the Empire state. Four hundred delegates, in the flower and freshness of youth, were present at the session, which continued for

* See Vol. III, p. 193. † See Vol. III, p. 197. ‡ See Vol. III, p. 117.

several days. Mr. Seward was called to preside over its deliberations. He fulfilled the duties of the office with marked ability. Though only twenty-seven years of age, he exhibited a dignity, decision and courtesy which would have done honor to an experienced statesman. He left a singularly favorable impression on the minds of his colleagues, who, with scarcely an exception, have adhered to the political principles of that convention, until the present time. Many of the most prominent men in New York date their interest in politics from the Young Men's State Convention, and have since exerted an influence which led to a decisive change in the policy and relation of parties in the sate.

The election of General Jackson to the presidency in 1828 dissolved the National Republican Party in Western New York, with which Mr. Seward, as an ardent supporter of John Quincy Adams, had been identified. Meantime, the anti-masonic party had risen into consequence, and though of local origin, and acting in a limited field, for several years, it formed the only opposition in Western New York to the Albany regency and the Jackson administration. In 1828, this party tendered a nomination as member of Congress to Mr. Seward, which he declined, on account of the obligation that he felt to support the national republican party. On the overthrow of the latter party, Mr. Seward and his friends, sympathizing with the citizens who were engaged in vindicating the supremacy of the laws, naturally united with the anti-masons, as affording the best position for a successful resistance of the national and state administrations. Among his political associates at that time, were Frederic Whittlesey, Thurlow Weed, Francis Granger, John C. Spencer, Millard Fillmore, and other distinguished public men of the present day.

In 1830, Mr. Seward was nominated by the anti-masonic party as a candidate for the state Senate, from the seventh district, comprising, at that time, the counties of Onondaga, Cayuga, Cortland, Seneca, Ontario, Wayne, and Yates. The nomination was unexpected, but he did not feel at liberty to decline it. Although the district had given a large Jackson majority the preceding year, and the anti-masonic candidate for governor, Francis Granger, was defeated, at the same election, by a majority of 8000, Mr. Seward was elected to the Senate by the handsome majority of 2000 votes. In Cayuga county, where he resided, the democratic party had long enjoyed a decided ascendancy,

but still a majority of the senatorial votes were cast for Mr. Seward.

Mr. Seward took his seat in the state Senate, in January, 1831. This was his first election to civil office. He had always regarded the career of a statesman, as affording scope for the accomplishment of noble deeds in behalf of freedom and humanity. Hence, he cheerfully exchanged the routine of legal practice for the functions of the legislator. He was, probably, the youngest member that ever entered the New York Senate, having not yet completed his twenty-ninth year. In spite of his youth, he soon attained an honorable distinction among his colleagues. With an almost juvenile ardor of temperament, inspired with a generous ambition, cherishing the deepest sentiments of patriotism and philanthropy, a champion of liberty and popular rights, despising the vulgar arts of hackneyed politicians, and filled with an enthusiastic faith in the ultimate triumph of truth and justice,—Mr. Seward came into the Senate of his native state, a new man, fresh from the living masses of the people, and breathed over that body a spirit of vitality and progress, of which the influence remains to the present day. His course at once assumed the character of boldness and originality which it still sustains. It was not shaped in accordance with traditional prescriptions, but following the impulses of an inventive mind, sought to develope new measures of public good, and larger enfranchisements for the people.

The circumstances, however, under which Mr. Seward entered the Senate were adapted to discourage an ingenuous and earnest spirit. The Jackson party were in possession of unlimited sway. Wielding the vast patronage of the federal and state governments, their influence was as extensive as it was pernicious. The Albany regency, knit into a unit by the passion for office and its attending emoluments, ruled the state with an iron rod. With the appointing power, to a great degree, in their hands—controlling the currency, by their connexion with the banks—retaining well-disciplined emissaries in every county and town to carry their plans into effect—this central junta had but to touch the springs at Albany, to produce any desired movement in the remotest corner of the state. A large majority of the Legislature were the supple tools of the regency, ready to enact such measures, as might be deemed necessary to maintain the preponderance already secured.

Mr. Seward threw himself fearlessly into the opposition. He soon became its acknowledged leader. Among the debates in which he took a prominent part, were those relating to internal improvements and universal education. He labored strenuously in behalf of the common school system. He urged the abolition of imprisonment for debt, the melioration of prison discipline, and the establishment of a separate penitentiary for female convicts. The construction of the Chenango Canal received his efficient support. He opposed the transfer of the salt duties from the canal fund to the general fund, but voted for their reduction. He sustained the bill for making the stockholders in commercial companies personally liable, but not in manufacturing companies. He opposed increasing the salaries of the higher judicial officers, and introduced important amendments of the law in relation to surrogates. But few bank charters obtained his vote. Gov. Marcy's great loan law* met with his vehement opposition. He made a powerful speech against executive interference with the United States Bank, and against the removal of the deposits;† while he supported Gen. Jackson's measure in regard to southern nullification. Mr. Seward was one of the earliest friends of the New York and Erie Railroad;‡ lending it his aid in all its vicissitudes, until it was at length brought to a triumphant completion.

Mr. Seward's first parliamentary effort was his speech on the Militia Bill,§ delivered on the 7th of Feb., 1831. In this speech, he proposed a thorough revision of the militia system, substituting volunteer uniformed companies for the general performance of military duty. His views were characterized by the far-reaching wisdom, the lively sense of the progressive wants of the age, which have often placed him in advance of his compeers, as an advocate of beneficent reforms. At first, his suggestions failed to command assent; but they awakened discussion; and nearly twenty years afterward were adopted in substance.

In March of the same year, a bill was introduced authorizing an appropriation to collect materials for a Colonial History of New York. It was supported by Mr. Seward, in a brief but earnest speech. He maintained that the official documents, relating to the early history of the state, contained in the archives of several

* See Vol. I, p. 37.
† See Vol. I, p. 14.
‡ See Speeches and Addresses in Vol. III, p. 306.
§ See Vol. I, p. 1.

European governments, especially of Great Britain, Holland, and France, should be collected by competent agents and embodied in a Colonial History. His plan was adopted, and subsequently carried into effect during his administration as governor. The result was the publication of four large volumes of the Documentary History of New York, which appeared during the administration of his successors, Governors Fish and Hunt.

The next important speech of Mr. Seward was on the election of mayor of the city of New York.* This was delivered on the 23d of April. Under the first constitution the mayors and recorders of cities were chosen by the Council of Appointment at Albany. Under the new constitution of 1821, mayors were chosen by the Common Council, and recorders were appointed by the Governor and Senate. The new charter of New York gave the mayor a veto on the acts of the Common Council. A petition was presented to the Legislature by the citizens for a change in the Constitution, giving the election of mayor directly to the people. This was opposed by the dominant party. They brought in a resolution providing that mayors should be chosen in such manner as the Legislature should direct. Mr. Seward took decided ground in favor of the New York petition. Arguing on the merits of the question, he contended that not only in New York, but in all cities, the mayors should be chosen by the people. This was in accordance with his democratic principles, which have always led him to claim the largest extent of privilege for the people. His views were finally adopted in the legislature of the state.

During the same session he materially aided the bill for the abolition of imprisonment for debt, which at length passed; while the measure was fully completed, as will be seen in the sequel, under his subsequent administration.

At the close of the session Mr. Seward was appointed to draw up the Address to the People of the Minority of the Legislature. In this address† he reviewed the financial condition of the state, and exposed the mismanagement of the treasury. He showed the radical defects of the safety fund system, which under partisan control gave the government of the state to the Albany regency. This monopoly was overthrown by the whigs, on their accession to power in 1837, and the freedom of banking, under suitable safe-guards, permitted to all citizens. The contro-

* See Vol. I. p. 10. † See Vol. III. p. 338.

versy between New York and New Jersey was at that time a source of much excitement. The address exposed the conduct of the Executive, showing that it amounted to virtual nullification.

On the 4th of July, 1831, Mr. Seward delivered an anniversary oration* before the citizens of Syracuse. He took for his subject, The Prospects of the United States. In a strain of masculine eloquence, he defended the American people against the charge of national vanity and presumption, and uttered a stirring appeal for the cultivation of public virtue and the spirit of devotion to the Union.

The meeting of the Legislature in 1832 again found Mr. Seward at his post. He entered, with his habitual zeal, upon the great questions which then agitated the public mind. Relying upon the soundness of his principles, he boldly maintained the conflict against a majority so overwhelming, that to a less ardent temperament than his own, opposition would have seemed hopeless.

A resolution was brought into the Senate, at the commencement of the session, against renewing the charter of the United States Bank. Soon after a substitute was proposed, declaring the necessity of a national bank for the collection of the public revenue and the preservation of a sound and uniform currency. On the 31st of January Mr. Seward delivered a speech in support of the proposed substitute. This was his first elaborate effort in the Legislature. Having given a minute history of the Bank of the United States, he discussed the fiscal system of the government, and exposed the fallacy of Gen. Jackson's objections to the renewal of the Bank charter. His line of argument was substantially the same as that pursued by Mr. Clay and Mr. Webster in the United States Senate. His speech produced a marked sensation throughout the country. The question was new and exciting—it took strong hold of public feeling, and great satisfaction was expressed by the opponents of the Federal administration on the appearance of this powerful appeal in its favor. Combined with the discussions on internal improvements and state banks, the speech of Mr. Seward and that of Mr. Maynard on the same subject, had the effect of concentrating the opposition to the Albany regency and Jackson's administration, in an organized system. This was the origin of the

* See Vol. III. p. 200.

political body, which two years afterwards took the name of the Whig Party.

On the 20th of March, the question came up on the establishment of a separate penitentiary for female convicts. In his speech on this subject, Mr. Seward took the broadest grounds of Christian philanthropy. He argued that the imprisonment of women in penitentiaries adapted only to the other sex, and under the exclusive management of men, was inhuman, and at war with the benevolent spirit of the age. He showed the benefits which the convicts would derive from the kind and judicious care of persons of their own sex. The prison, he maintained, should be made a house of refuge, rather than a place of punishment, where its unfortunate inmates might find protection from the wrongs they had received, in most cases at the hands of men—where they might receive instruction and guidance—be inspired with new hopes—and prepared to return to society with the prospect of honor and happiness. The measure, which was carried, owed its success to the exertions of Mr. Seward, greatly aided, however, by the efficient co-operation of Mr. McDonald of Westchester county.

In a speech during this session on granting a charter to a Whaling company, Mr. Seward made a vigorous attack on the tendency of legislation to corporate monopolies for banking, canals, railroads, and similar purposes. His efforts were not supported, and for a time proved unavailing. But the good seed has since ripened. The present system of opening every branch of business to voluntary association, without legislative interference, is the fruit of the principle he then maintained, and is an ample vindication of their soundness and utility.

At the close of the session of 1832, Mr. Seward was again appointed to prepare the Address of the Minority of the Legislature to their constituents. In this document he resumed the discussion of the fiscal affairs of the state, showing the abuses of the administration in management of the public funds for political purposes, exposing the misconduct of the Legislature in the incorporation of banking monopolies, and predicting the ruin of the banks from the policy pursued. His prophecy was in due time fulfilled.

In the presidential campaign of 1832, Mr. Seward gave his support to the electors who were to vote for either Mr. Wirt or Mr. Clay as their vote should prove effective. He has since repeatedly supported Mr. Clay as a candidate for the Presidency, although

it is known that he always foresaw his defeat, and it is therefore questionable whether that eminent statesman was ever his first choice.

At the legislative session for this year, Mr. Seward took a still more prominent share in the proceedings of the Senate. The nomination of Mr. Tallmadge, then a member of the Senate, to the office of United States Senator, called forth the discussion of an important constitutional question. A clause in the state Constitution prohibited any member of the Legislature from receiving office at the hands of that body, during the term for which he was elected. The attorney general, to whom the question of eligibility had been submitted, decided in favor of Mr. Tallmadge. This decision was controverted by Mr. Seward in a speech of remarkable power of logic and eloquence. He was overruled by a strictly party vote; but one can hardly read his speech without being convinced that the appointment, made for temporary political purposes, was a violation of the constitution.

The nullification movements in the South were brought before the attention of the Senate in February, 1833. On the 16th of that month Mr. Seward introduced a series of resolutions, maintaining that Congress should be governed by a strict construction of the powers entrusted to the general government. In his speech sustaining the resolutions he rebuked the democratic party in the state for their disposition to tamper with the principles of nullification, while professing to support Gen. Jackson's measures, which threatened the nullifiers with the penalty of treason.

During this session Mr. Seward took part in the discussions on the navigation of the Hudson, and on the increase of Judicial salaries.

On the 1st of June, 1833, Mr. Seward sailed for Europe in company with his father. They made a rapid tour through parts of the United Kingdom, Holland, Germany, Switzerland, Sardinia and France. During his absence he wrote home a series of letters* describing the countries that he visited, which were afterwards published anonymously in the Albany Evening Journal. These letters exhibit a refined taste, great acuteness of observation, and a genial sympathy with the grand and beautiful in nature. The reputation of the writer was enhanced by the avowal of their authorship.

* See Vol. III.

Mr. Seward returned from his European tour in season to take his seat in the Senate, at the opening of the session of 1834. The public attention was occupied with important questions both of national and of state politics. In the controversy relating to the United States Bank, Mr. Seward took a leading part, and by his vigorous and eloquent appeals produced a strong impression upon the public mind.

The removal of the deposits by Gen. Jackson took place in Sept. 1833. Mr. Van Buren was then vice president, and in order to promote his claims to the presidency, it was deemed essential to obtain the approval of the New York Legislature for the measures of Gen. Jackson. Joint resolutions were accordingly introduced by the administration party in January, 1834, approving the removal of the deposits, instructing the Senators and Representatives in Congress to oppose the renewal of the bank charter, and ascribing the financial distress of the country to the influence of that institution. These resolutions passed the Assembly by a large majority. Not a voice was raised in opposition to them. In the Senate, however, they met with a different reception. With a deep conviction of duty, and in spite of the remonstrance of his friends, Mr. Seward broke the ominous silence, and in an elaborate speech* opposed the passage of the resolutions. This speech, which was, on the whole, the most powerful effort of his intellect and legislative experience during his career in the New York Senate, occupied a part of two days in the delivery. It was a forcible and conclusive in argument, pointed and brilliant in expression, and adorned with the appropriate embellishments of historical and classic illustration. Its effect, not only on the Senate, but throughout the state, was of so decided a character, that several senators of the opposite party attempted to set aside its influence by formal replies. This called forth Mr. Seward in a rejoinder, on the 24th of January, on which occasion he indulged in a severity of remark to which he was not accustomed, and for the only time in his public life, noticed the personal attacks of which he had been made the subject.

The evils which Mr. Seward had predicted in consequence of the removal of the deposits, spread over the country with fearful rapidity. Before the close of the session, a severe financial

* See Vol. I. p. 14.

pressure was felt everywhere. Commencing among the mercantile classes, it soon extended to every department of business and industry. Public meetings were called to express the prevailing dissatisfaction, and to avert further calamity. Committees were appointed to implore relief of the President and Congress. As a suitable measure to alleviate the general pecuniary distress, Gov. Marcy recommended the issue of six millions of stock, to be sold on account of the state. A bill to this effect was introduced into the legislature, providing that four millions of the avails of this stock should be loaned to the safety fund banks, and the remainder to individuals, on bond and mortgage. Mr. Seward denounced the measure in an admirable speech,* delivered on the 10th of April, 1834. The design of the bill was to operate favorably for the administration at the ensuing fall election. This resulted in the re-election of Gov. Marcy; no stock was issued, and the measure, having accomplished its purpose, passed into oblivion.

The last speech of Mr. Seward in the Senate related to the chartered rights of the city of Albany. It was a temperate and logical performance, but failed to prevent the passage of a law, which in his view, was a violation of the rights of the city. At the close of the session, he was for the third time designated to draw up the usual address† of the minority of the legislature to the people of the state. The two great parties on national and state questions were now fully organized. A general trial of strength was to be made in the approaching election. The result of this struggle would indicate the probable issue of the presidential election which was to take place in 1836. The address, accordingly, went into a thorough exposition and defence of the whig policy, and with this document, were concluded the services of Mr. Seward in the Legislature of New York.

The Court of Errors, which was the court of final appeal in New York, from 1775 to 1846, was an institution copied from the English House of Lords. It consisted of the Chancellor, the Judges of the Supreme Court, and the members of the Senate. In the case of appeals from chancery, the Chancellor gave his reasons for the decree he had made, but did not vote. In acting on judgments of the Supreme Court, the Judges explained the grounds of their decision, but did not vote. Mr. Seward, although at that time the youngest member of the court, took a leading

* See Vol. I, p. 37. † See Vol. III, p. 349.

part in its proceedings. His course was distinguished for its independence, although he never forgot the courtesy due to his seniors. With remarkable power of analysis and accuracy of research, he made himself master of every case, that was presented for decision. An opinion pronounced by him in the case of Parks *vs.* Jackson affords an illustration of his character as a judge. In that case,* a technical rule had been applied by the Supreme Court, in such a manner as to deprive tenants of valuable estates for which they had contracted and paid in good faith. The reasons for this decision were assigned by Mr. Justice Nelson, of the Supreme Court, afterwards Chief Justice, and now a Judge of the United States Supreme Court. Chancellor Walworth followed in an opinion, in which he defended the judgment of the Supreme Court. Mr. Seward then rose and delivered an adverse opinion, and on the question being taken on reversing the judgment, all the members of the court, with the exception of the Chancellor, voted in the affirmative. This seems to have been a case where the technicalities of the law came in conflict with justice. Mr. Seward, prompted by a noble sentiment of right, vindicated the claims of justice, against the arbitrary rules of law, carrying the whole court with him, in spite of their previous intentions.

On the 16th of July, 1834, Mr. Seward delivered a eulogy† on the life and character of Lafayette, before the citizens of Auburn. This was a chaste and beautiful production. It presented an admirable analysis of the character of Lafayette, with a discriminating review of the principles of the American Revolution, and of the successive phases of French politics from the death of Louis XVI. An account of a recent personal conversation between Mr. Seward and Lafayette, added greatly to the interest of the discourse.

As the autumn of 1834 approached, when the election of Governor was to be made by the people, the whig party were in anxious search of a suitable candidate for the important crisis. They were not wanting in men, whose political experience, distinguished ability, and brilliant reputation, eminently qualified them for the office. Of these, some had already been candidates and had suffered defeat. Others lacked the elements of popularity that were essential to success. The general impression of the party favored the selection of a new man. The younger portion

* Wendell's Reports, Vol. XI, p. 456. † See Vol. III, p. 25.

of the whigs were earnestly desirous that the candidate should be taken from their ranks. Mr. Seward's distinguished senatorial career had made him prominent before the party and the state. His bold attacks on the policy of the administration had won the gratitude and the admiration of the whigs. It was mainly through his efforts, that the party had been organized, and no one was better fitted than himself to take the position of their acknowledged leader.

Accordingly, at the Whig State Convention, held in Utica, Sept. 13th, 1834, Mr. Seward was nominated as a candidate for governor. The election came, and he was defeated. The result showed that the whig party had not been able to put forth its full strength. It had not yet gained confidence in its own power to cope with a party that had never been overthrown, and was sustained by the monetary influence of the state and the vast patronage of the national government. Mr. Seward received a flattering vote, and led his ticket in all the counties, but Gov. Marcy was re-elected by a majority of about ten thousand.

Mr. Seward, having escaped the claims of public life, resumed the practice of his profession at the commencement of the year 1835. Nor did he lose his interest in the great political questions of the day. He still labored, with unshrinking fidelity, in support of the party to which he was attached, and of which, by a large portion, he was regarded as the head.

On the 3d of October, 1835, he delivered an address* at Auburn on Education and Internal Improvements. This production was remarkable for its anticipations of the progress of the state, and its lucid exposition of the principles of government, which he afterwards carried into effect, during his administration as chief magistrate.

In July, 1836, Mr. Seward established himself in Westfield, Chautauque county, for the purpose of assuming an agency to quiet the troubles between the landlords and tenants of the Holland Company. Serious difficulties had arisen among the settlers on the tract of the company, and the services of Mr. Seward seemed important for the restoration of tranquillity. A change of scene also it was hoped, would prove favorable to his health, which had become impaired by his assiduous professional labors. The manner in which he conducted this agency subjected him to much reproach

* See Vol. III, p. 128.

in a subsequent political canvass. But of this we shall have occasion to treat in another place.*

The election for governor in 1836 resulted in favor of Mr. Marcy, who received a majority of nearly 40,000 votes over the whig candidate, Mr. Jesse Buel. Meantime, Mr. Seward continued his agency, and his professional toil, with extraordinary success. His growing fame produced no abatement of his industry, and he devoted himself to the interests of his clients with the same earnestness and zeal which he had exhibited in his political efforts on the floor of the Senate. During this period he prepared several essays, which display genuine literary merit, no less than a spirit of enlarged and comprehensive statesmanship.

Mr. Seward received an invitation to deliver a discourse on Education† at Westfield in July, 1837. He accepted the service, which he performed with signal ability. The discourse was a clear and eloquent defence of the principle of universal education. It maintained the duty of giving public instruction to all classes of the people, irrespective of condition or circumstances. In regard to the education of females, it claimed for woman the highest standard of literary attainment, challenging for her the same intellectual advantages that were enjoyed by the other sex.

At a meeting of the whigs of Cayuga county, Oct. 11, 1837, Mr. Seward delivered a speech of masterly ability. The state of the country called forth his most vigorous eloquence. The commercial revulsion, which he had so long predicted, was sweeping over the land. Disastrous experience gave ample confirmation to the principles of the whigs. In his speech on this occasion, Mr. Seward earnestly appealed to the people to redress their wrongs at the ballot box. This was only one of many efforts during the canvass. He was indefatigable in his exertions, which were now crowned with the most brilliant success. The election resulted in the total overthrow of the Albany regency. The whigs gained a triumphant victory throughout the state, electing six out of eight new senators, and one hundred of the one hundred and twenty-eight members of the Assembly.

The New York and Erie Railroad was originally undertaken by a company chartered while Mr. Seward was a member of the Senate. He voted against the charter, not through hostility to the construction of the road, but on the ground that so great an enter-

* See Letter to the citizens of Chautauque Co., Vol. III. † See Vol. III, p. 136.

prise could not be effected by a corporation, and that the road when completed should pass into the hands of the state, like the Erie Canal, for the public benefit. His vote being misrepresented in the election of 1834, he corrected the error in a letter to a committee,* declaring himself unreservedly in favor of that great work. As he had predicted, the enterprise languished until 1837, when it was abandoned by the regency and its party in the legislature. It was still sustained by the whig majority in the Assembly, whose policy, however, was rejected by a regency Senate.

A convention of the friends of the railroad was held at Elmira on the 17th of October, 1837, at which Mr. Seward was present. He was the first citizen, living in a portion of the state not immediately interested in the enterprise, who gave it his personal support. At the request of the convention, he prepared an address † on the subject to the people of the state of New York, in which he gave a brief history of the road, and urged the adoption of efficient measures for its speedy completion. He placed the resumption of the work on the same broad principles of policy which pervaded his subsequent administration. On the strength of such reasonings, the whig party throughout the state gradually yielded their aid to the project, and at length rejoiced in the completion of the truly magnificent structure.

At the Whig State Convention in 1838, the names of William H. Seward and Luther Bradish were presented to the electors of the state for governor and lieutenant-governor. The previous defeat of Mr. Seward had not in the least degree weakened the confidence of his friends. They knew that it was not owing to personal causes, but to the position of parties; and hence were anxious again to present his claims for the suffrages of the people. Great importance was attached to the election by both political parties, on account of its bearing on the presidential campaign of 1840. The canvass labored under peculiar difficulties. During a season of great pecuniary embarrassment, Mr. Seward had conducted the affairs of the Holland Land Company to the eve of a prosperous close. His agency in Chautauque county had been managed with discretion and kindness; but it did not fail to be used by his political opponents as an instrument of reproach. Hoping to alienate the whigs from their favorite candidate, they charged him with fraud, injustice and oppression, in his treatment

* See Vol. III, p. 417. † See Vol. III, p. 306.

of the settlers, averring that he had employed his official power in the agency for his own private emolument, and the benefit of land speculators. Mr. Seward was silent in regard to these calumnies, until they had awakened a painful anxiety toward the close of the canvass. He then published his letter to the citizens of Chautauque county,* which, by its clear and cogent statements, put an effectual stop to the slanders that were in circulation and gave him popular strength never enjoyed before.

The slavery question was another perplexing element in this canvass. The yet distant prospect of the annexation of Texas was viewed with alarm by the friends of liberty at the North. It renewed the discussion of slavery, which had not entered into political movements since the Missouri Compromise in 1820. A portion of the citizens of New York, headed by William Jay and Gerrit Smith, had addressed letters to the several candidates for office, intended to draw out their views on the subject of slavery. The mass of all parties regarded this course of action with profound disgust. The candidates of the regency party did not hesitate to give a negative answer to the questions that had been propounded. The whigs were thought to be placed in an inconvenient dilemma. Mr. Seward's answer† was at once frank and sagacious. While he expressed without reserve his devotion to human freedom, he limited his aims by a regard to prevailing opinions, and a sense of what was practicable in the attainment of right. His reply did not compromise his popularity, as had been hoped by his opponents.

The election was warmly contested. With the regency the struggle was for life or death. No measures were neglected on their part to defeat the candidates of the whigs. Every species of objection was urged against Mr. Seward. The gravest and the most trivial charges were alike brought to bear on the canvass. Among other things he was accused of the "atrocious crime" of being a young man, as he was but thirty-three when first nominated for governor, and at this time but thirty-seven. The election took place in November, and in spite of unexpected disasters to the whig cause in all other states, the "young man" was triumphantly elected. Mr. Seward's majority reached to 10,421. The whig party carried the state in every department, and secured a complete ascendancy of political power.

* See Vol. III. p. 457. † See Vol. III. p. 426.

Mr. Seward was the first whig governor of New York. With the exception of De Witt Clinton, he was the only one who had ever been elected in opposition to the Albany regency. The party which had virtually dictated the policy of the state for nearly fifty years was thus effectually destroyed, and a new development of principles was to be realized under the administration of William H. Seward.

In entering upon the executive office, Gov. Seward was surrounded with peculiar difficulties. The business of the country had been prostrated by the revulsions of 1836. His political friends looked with confidence to his administration for the financial relief of the public. The whigs, moreover, were in power for the first time. Numerous and excited applicants eagerly pressed their claims for office. In this crisis, Gov. Seward conducted with great moderation and impartiality. Cautious in making promises, he rejected no application without substantial reasons, which he never took pains to conceal. His frankness in rendering all necessary explanations to a disappointed candidate was equal to the wise reserve with which he abstained from giving undue encouragement.* In this judicious course, however, he did not avoid offence. Applicants were more numerous than offices. Of course, some must be disappointed. And of these some rallied around rival statesmen. Gov. Seward thus incurred the opposition of several prominent members of the whig party, who, naturally enough, adopted principles different from his own.

Nor did his election bring the political contest in the state of New York to a close. An important battle had been won, but the campaign was not completed. Never did party zeal run to a greater height, than during the period of his administration. In describing his official career, we shall do little more than indicate the principles by which it was inspired, as delivered in his messages, and other executive papers.

Among the measures to which the attention of Gov. Seward was early directed, was the completion of a lunatic asylum, and the adoption of a judicious and humane system for the treatment of the insane. Before his retirement from office, his suggestions in this behalf were carried into successful operation. Frequently visiting this and other charities of the state, he recommended them to the patronage of the legislature, as well by his example as his counsels.

* See Official Correspondence, Vol. II, p. 589.

In the exercise of the pardoning power, Gov. Seward exercised we think, a greater degree of wisdom than most of his predecessors. At the same time he labored for the introduction of milder forms of punishment in the penitentiaries, substituting moral discipline for the lash. These reforms were afterward adopted by the legislature.

The interests of agriculture always received the fostering care of Gov. Seward. He was anxious for the establishment of an agricultural department in the state, with a view to the especial promotion of that important source of public prosperity. His efforts for that measure, however, were not seconded by the legislature, and have remained to this day without direct fruit.

Upon the accession of Gov. Seward to office, the system of normal schools in connexion with academies and common school libraries, had been partially established. These measures received his cordial and efficient support. At his suggestion, a system of visitation and inspection of common schools was adopted by the legislature, although it has failed to be carried into full effect, much to the detriment of the cause of popular education.

In his messages, Gov. Seward took the ground that the welfare of the state demanded the education of all its children,* not as a matter of charity, but of justice and public safety. The defects in the public schools of New York city led him to recommend a modification of the system, and the ultimate substitution of the plan which prevailed in the rest of the state. A prejudice, partaking both of a national and religious character, had come down from the colonial period against foreigners, and especially against catholics. It was this class of the population that would be most directly benefited by the change in the city schools. It was proposed to admit catholic teachers with the same facilities as others. An alarm was at once raised throughout the state. The protestant cause was declared to be in danger, from the undue ascendancy of the catholics. Religious bigotry was thus excited. The hostility, both of protestant clergy and laity, was arrayed against the governor. He was labeled in effigy in New York. The press teemed with abuse of his person and measures. Meantime his political opponents, who had always professed to be more friendly to foreigners and catholics than the whigs, did not fail to take advantage of the popular jealousy for the promotion of their views. The

* See Annual Message, Vol. II. pp. 206, 216.

whigs, on the other hand, who were accustomed to contend with naturalized foreigners at the polls, were unwilling to accord them any privileges. Between the two parties, Gov. Seward was obliged to maintain the contemplated reform on its own merits. His influence was greatly impaired by the general impression that the measures in question were not only untenable in themselves, but that they had their origin in sinister political purposes. This impression, however, was wholly unfounded, and did great injustice to Gov. Seward. His efforts in behalf of the children of catholics sprung from a deep conviction of the importance of education to all men, without regard to condition or circumstances.* During his travels in Ireland in 1833, he saw the effect of British policy in depriving the catholic population of the means of instruction. The people, thus kept in abject ignorance, were more easily made the victims of oppression and tyranny, and more liable to become seditious and treasonable. This spectacle produced a strong impression on his mind. He became anxious that the catholics in America should be put in possession of the advantages of education, and so be assimilated to the native population. †

The controversy on the school question continued throughout the whole of Gov. Seward's administration. It affected his popularity so much as to deprive him of about 2,000 votes on his re-election. The result, however, has shown his far-reaching sagacity. Like many other measures proposed by Gov. Seward, this was in advance of public opinion, but has since commended itself to the good sense of the people. At the first session of the legislature, after his retirement from office, his plan for the education of all classes of children, not excluding those of foreigners and catholics, was adopted by decisive majorities. No doubt has since arisen as to the utility of the measure, except on the part of those whose religious scruples had led them to decline a participation in its advantages.‡

Along with these efforts of Gov. Seward in behalf of educational reform, he was also actively engaged in the removal of the prejudices between native Americans and adopted citizens. His recommendations to successive legislatures for abolishing the legal

* See General Correspondence. Letters to Bishop Hughes and others, Vol. III.

† See letters from Europe, Vol. III.

‡ Gov. Seward's attention was first called to this question by the fact that the annual school returns from New York showed that there were about 25,000 children in that city who did not attend school, and were thus left exposed to the allurements of vice and crime.

disabilities under which foreigners labored, were with more or less reluctance, ultimately adopted.*

The city of New York was, at that time just beginning to be crowded with immigrants who poured into the country from foreign lands. Overtaken by poverty and disease, they served to fill the almshouses and the prisons. Their overflowing numbers increased the amount both of wretchedness and of crime. In order to lessen the evil, a tax upon emigrants was recommended by the mayor of New York. The proposal met with general favor. Under these circumstances the public was astounded by the suggestions of Gov. Seward for the encouragement of emigration. He maintained that the surplus labor of foreign lands should be employed to advantage in developing the natural resources of this country. Instead of shutting our doors upon the down-trodden emigrant, he insisted that we should welcome him to a share in our industry and citizenship. This generous and humane policy, however, was vehemently condemned. It subjected its author to great reproach. Still, as in the case of the school reform, his measures were finally adopted by the state. In 1847 they were made the subject of discussion in the legislature, and having passed that body, have since been a part of the established policy of New York.

The courts of law and of chancery in the state of New York had from time immemorial been subject to a variety of expensive delays. Organized on the model of the English system, the higher courts consisted of judges, a chancellor, and a vice-chancellor appointed by the governor and senate, and holding office until sixty years of age. In the common pleas the judges were appointed for five years by the same power. The legal practice was marked by all the prolixity, technicalities, and superfluous expense of the English courts. The judiciary and the banking powers were combined with overpowering and overshadowing influences by the Albany regency. Gov. Seward exerted all his influence in favor of reform. He was opposed both by the bar and the judiciary. In opposition to their combined efforts, he secured the passage of bills in the legislature for reducing the expenses, and simplifying the practice in all the courts of the state. Nor did he stop with this measure for the relief of the public. He urged a complete reform in the constitution of the courts. His plan involved the abolition of the court of chancery, and a new organization of the supreme

* See Annual Messages, Vol. II.

courts and the common pleas. The legislature did not receive his suggestions with favor; but they did not fail to exert a salutary influence on the public mind. No one can doubt that they prepared the way for the radical change in the constitution effected in 1846. Under this arrangement the court of chancery, after an existence of over one hundred and fifty years, was abolished, and all judicial offices made elective by the people.

It was the desire of Gov. Seward from the commencement of his official career, to effect the decentralization of the political power in the state. By the existing laws, the judges of common pleas were associated in the respective counties with the board of supervisors in the appointment of commissioners of deeds, superintendents of the poor, and other county officers. The boards of supervisors were usually divided in politics, and hence the appointments were in fact decided by the central power at Albany, from which the judges received their offices. At the recommendation of Gov. Seward the appointing power was withdrawn from the judges, and the election of most of these offices given to the people. His efforts for reducing the emoluments of several favorites in public office were partially sanctioned by the legislature. But his recommendation to abolish the office of inspector of various branches of produce and manufacture was not adopted until after the close of his administration.

The safety fund system, of which Gov. Seward had always been a decided opponent, exploded in 1837. A general banking law, passed by the whig assembly of 1838, gave the liberty of banking to any voluntary association of citizens. The new system, however, was at first defective in its details. Many of the banks under this organization failed, producing a loss to the bill-holders. During Gov. Seward's administration, the law was revised, and with successive improvements, has become the settled policy of the state, and has also been adopted by several other states of the Union.

A warm discussion arose during this period, in regard to the minimum denomination of bank paper to be used as a circulating medium. In accordance with the views of Gen. Jackson, bills under five dollars were prohibited by the legislature of 1837. The senate of 1838 refused to repeal this law. At the recommendation of Gov. Seward in 1839, the act was repealed by the whig legislature and no attempt has been made to restore it since.

The geological survey of the state, which had been commenced

pursuant to an act of the legislature in 1836, was brought to a completion, under the auspices of Gov. Seward. At his suggestion, the legislature appropriated funds from time to time for its prosecution, and established a depository for the preservation of specimens illustrative of the natural history of the state. This, he recommended should be made the foundation for a system of popular instruction in the natural sciences, with a view to the improvement of agriculture. The spirit of his suggestion has been carried into effect by the State Agricultural Society, in its system of popular lectures and discussions which are held in the Geological Museum at Albany.

The results of the geological survey were embodied in a series of quarto volumes, which ultimately reached the number of thirteen. Gov. Seward prepared an elaborate introduction to the work, consisting of a review of the settlement, progress, and condition of the state of New York, somewhat on the plan of Mr. Jefferson's "Notes on Virginia." This historical essay is written in a style of admirable clearness and fluency, abounding in recondite and valuable information, and pervaded by an elevated tone of patriotism and humanity. It appears in this work under the title of "Notes on New York."*

The abolition of imprisonment for debt, effected in 1832, did not reach the class of non-resident debtors, or those held by process issuing from the United States Courts. Gov. Seward was opposed, both from feeling and principle, to depriving unfortunate debtors of their liberty and of the opportunity to provide for their families. He had not been long in the executive office, when he procured the passage of laws, which swept away these relics of barbarism from the jurisprudence of the state.

In general, the laws of the state were faithfully executed during Gov. Seward's administration. There was, however, an exception. In the counties of Albany and Rensselaer, was a tract of land, fifty miles square, lying on both sides of the Hudson river, which was claimed to have been granted by the Dutch government, at an early day to the Van Rensselaer family, and which was originally denominated the manor of "Rensselaerwyck." The lands on this tract had not been granted in fee to settlers, as elsewhere, but had been farmed out on perpetual leases, securing annuities to the proprietor, (denominated the *Patroon*,) payable in kind and in labor,

* See Vol. II. p. 9

and containing covenants, raising charges upon alienation. The late Patroon, Hon. Stephen Van Rensselaer, had suffered numerous arrearages of rent to remain uncollected for many years. At his decease, his heirs demanded payment of these arrearages. The tenants refused to comply. Differences growing out of these matters, which extended back through a period of near fifty years, ripened, in 1839, into discontents, popular outbreaks, and open resistance of the laws. Refusing to tamper with such violent proceedings for a moment, Gov. Seward issued his proclamation,* calling upon the discontented to reflect upon the nature and consequences of their unlawful acts, and apply to the legislature for redress of their grievances, pledging himself to grant them every aid in his power, in bringing their complaints before that body. This proclamation was accompanied by the organization and despatch of a military force, which, acting under the authority of the sheriff, attended him until he had executed the legal processes in his hands, including those against the individuals who had resisted the laws.

In announcing these measures to the legislature in his annual message, in 1840,† Gov. Seward discussed the nature of the tenures out of which the disturbances had arisen, and recommended that efforts should be made for the removal of the difficulty which threatened to be lasting and serious in its consequences. He urged a compromise of the conflicting claims of landlord and tenant, with their consent, and without injustice to either party. The recommendation was adopted, and Hugh Maxwell and Gary V. Sacket, Esqs., were appointed commissioners to effect, if possible, a satisfactory adjustment. After examining the subject, and hearing all the parties, the commissioners decided on the basis of an adjustment, which they recommended for the adoption of the litigants. The tenants assented. But the landlord, under mistaken advice, refused the proffered terms, and insisted on the rights secured in his leases. So the settlement failed.

During the residue of Gov. Seward's administration, the laws were executed throughout the discontented regions, as in the other parts of the state. But the controversy between the proprietors of the Rensselaer manor and the tenants, still continued, and has not been settled to the present time. Loud complaints were made against the governor for what was alleged to be an unjust conces-

* See Vol. II, p. 352. † See Vol. II, p. 219.

sion to the claims of the tenants, in treating the restraints on alienation and other features in these cases, as illegal and inexpedient. Since Gov. Seward's retirement from the executive office, armed resistance has been more than once renewed, and a ruinous litigation has never been suspended. While we are writing these memoirs,* the Court of Appeals has vindicated the views of Gov. Seward, by declaring the restraints upon alienation, illegal and void.

This affair furnishes another instance of Gov. Seward's clear forecast and sound wisdom, in the adoption of measures for the removal of existing evils. For the time being, owing to a want of equally enlarged views, his recommendations have been discarded. But time vindicates their soundness. In the present case, after the subject had been litigated, discussed, and argued for years, before legislatures and courts, the decision was finally made in conformity with the views he had originally urged upon the parties interested.

In his earlier years, Gov. Seward, as we have seen, devoted considerable attention to military affairs. During his administration, he labored for the accomplishment of certain reforms in the militia system, which he had urged while a member of the Senate. Its unequal operation was regarded by him as an infringement of personal rights, and a great public evil. He endeavored to relieve the members of the society of Friends, and other persons who declined performing military duty from religious scruples. This measure was not adopted by the legislature. But he did not fail to use the pardoning power of the executive in behalf of those, who had incurred the penalty of the law, in obedience to their consciences. In this course, Gov. Seward was true to the enlarged and liberal sentiments, which he had long cherished, in regard to religious freedom.† It was one of his strongest convictions, that no class of citizens should suffer from legal disabilities, on account of matters of conscience. Here, too, his views, at last, received the sanction of public opinion, and the changes in the militia system, which he had urged in his messages, became the policy of the state.

Previously to 1841, the elections in New York occupied three days—a single board of inspectors receiving all the votes in each town or ward. This arrangement occasioned numerous inconve-

* October, 1852. † See Miscellaneous Correspondence, Vol. III., p. 481.

niences. In the larger cities, especially, it gave rise to a system of frauds and combinations, impairing the purity of elections, and impeding the voter in the exercise of his political rights. Violent contests took place at the polls, which often resulted in the destruction of the ballot-box. Every one acknowledged and deplored the evil. It was not so easy, however, to discover the remedy. The whigs were in favor of an act of registration; but this was regarded by the opposite party as a scheme to deprive the poorer classes of the exercise of suffrage. As the support of both the great political parties of the day was essential to the success of the measure, the whigs modified their demands, limiting the call for a registry to the city of New York. Gov. Seward could not give this course his approval. He was opposed to all partial, invidious legislation. Nor could he be convinced of the practicability of the measure, in the existing state of feeling. He accordingly dissuaded his friends from urging the passage of such an act. In its place, he recommended the division of towns and wards into election districts, each containing not more than five hundred voters, and the limitation of the time for holding elections to a single day. These suggestions were accepted by the whigs, who then formed a majority of the legislature. But under the influence of members from New York, they added a provision for a registry act in that city.

Gov. Seward was thus again brought into collision with his political friends. He prepared a veto message,* presenting his objections to the feature of the bill establishing a registry. On consultation, however, with the whigs, it was found that even if the bill should not pass in spite of the veto, yet the party would be convulsed by the consequent excitement, and incur the hazard of yielding the control of the state to their political opponents. The governor was thus induced to suppress the veto and approve the bill, frankly stating to the legislature his objections to the feature in question, and predicting its ultimate effect. An election was held under the new law, in the following autumn. The city of New York returned a democratic majority, induced by the new provision. The legislature at once repealed it by a unanimous vote. The other provisions of the law still remain in force.

The patriot disturbance in Canada which occurred in 1837, awakened deep interest among the people of the United States,

* See Vol. III, p. 379.

who lived adjacent to the frontier. A military corps was organized to aid the Canadians in their struggle for independence. The federal government adopted stringent measures to enforce the neutrality laws. During these excitements an event took place which threatened serious embarrassment to the relations of the United States with Great Britain. On the night of Dec. 29, 1837, an armed force from Canada crossed the Niagara river, attacked a party of American citizens, who were then asleep in the steamboat Caroline, lying in the river at Schlosser. One man was killed; the rest were driven ashore. Having cut out the steamboat, the invaders set her on fire, towed her into the current of the stream and sent her flaming over Niagara Falls. This outrage everywhere excited the deepest indignation. In the border counties, especially, the people were almost in a frenzy of passion.

Three years after this occurrence, in the winter of 1840, a citizen of Canada, named Alexander M'Leod, while on a visit to Niagara county, was said to have boasted that he was an active member of the party which destroyed the Caroline. As he was known to be a warm loyalist, the assertion was readily believed. He was arrested on the charge of arson, and committed to jail. In due course of law he was subsequently indicted for that crime, and detained for trial. Upon this the British minister at Washington, Mr. Fox, made a reclamation on Mr. Van Buren, then president of the United States, in behalf of the prisoner. He insisted that the destruction of the Caroline was an act of war, for which the British government should be held responsible, and not a private individual. Hence he protested against the trial of M'Leod, and demanded his release from imprisonment. The president did not assent to the position of Mr. Fox; he maintained that the act was a violation of the jurisdiction of New York, and of the United States in time of peace. Even assuming the views of Mr. Fox to be correct, the matter belonged to the courts of New York for judicial examination, with which the federal government could not interfere.

The decision of Mr. Van Buren was immediately communicated to Gov. Seward, while Mr. Fox, on the other hand, submitted the subject for instruction to his government at home. Gov. Seward promptly and dispassionately replied to the president accepting his decision on the part of New York. This reply did not reach Washington until after the 4th of March, 1841, when the administra-

tion had passed into the hands of Gen. Harrison. The affair was accordingly entrusted to Mr. Webster, the secretary of state under the new president.

Meantime Gov. Seward had dispatched the attorney-general of the state, Hon. Willis Hall, to Niagara, in order to ascertain the facts relative to the transaction. The result of the investigation convinced the governor that the evidence was insufficient to sustain the indictment, as it appeared that M'Leod was not even on the American side of the river during the night on which the Caroline was destroyed.

Mr. Fox was instructed by his government to insist on the positions which he had assumed. He accordingly demanded the surrender of M'Leod, menacing the president with hostilities in case of non-compliance. In reply to Mr. Fox, Gen. Harrison conceded that M'Leod could not be held to trial for the alleged offence, thus confirming the views of the British government. This decision was communicated to Gov. Seward, in a letter from the secretary of state, through Mr. Crittenden, the attorney-general of the United States, who announced the wish of the president that a *nolle prosequi* should be entered, and a stop put to further proceedings. Mr. Crittenden was dispatched by the president to Niagara county, with directions to appear in court in behalf of M'Leod, and to urge upon Gov. Seward the entering of a *nolle prosequi*. In conversing upon the subject, Mr. Crittenden informed Gov. Seward, that Great Britain would declare war against the United States unless the surrender of M'Leod took place. It fully appeared, however, on further explanation, the retaliation threatened by Great Britain was made contingent not on the detention, nor on the trial, nor even on the conviction of M'Leod, but on his *execution*. This view was sustained by the correspondence with Mr. Fox. Gov. Seward then informed Mr. Crittenden of the course he should pursue. In the first place, it was not probable that M'Leod would be convicted, as there was no proof of his guilt—but if convicted, he could not be executed without the governor's consent; and inasmuch as both governments agreed that his conviction would be an infringement of international law, however he might differ from that opinion, he should feel bound to release the prisoner from his sentence. He added, moreover, that all the questions belonging to the case, must come under the cognizance of the state court, and therefore it was necessary for the

trial to proceed. But this course involved no risk of compromising our relations with Great Britain, for the reasons already stated.

The trial, accordingly, was postponed. Mr. Crittenden returned to Washington to lay the views of Gov. Seward before the president and his cabinet. It was understood that if these views were not approved, the subject should receive further examination. But the sudden death of Gen. Harrison, and the consequent dissolution of the cabinet, left the matter as it was.

Meantime, Joshua A. Spencer, Esq., who had been already retained as counsel for M'Leod, was appointed U. S. district attorney for the northern district of New York, although against the earnest remonstrance of Gov. Seward. At the succeeding term of the supreme court, Mr. Spencer appeared with instructions from the president, and demanded M'Leod's discharge from the indictment, without the formality of a trial. The motion was resisted by Willis Hall, Esq., in behalf of the state, under the direction of the governor. After elaborate arguments on both sides, the demand for M'Leod's release was denied, sustaining the ground taken by President Van Buren and Gov. Seward in opposition to the views of President Tyler.

In spite of the fact that war was suspended not on the trial, but on the execution of M'Leod, the public mind was greatly excited by the fear of a collision with Great Britain. Gov. Seward was reproached in many political and commercial circles, with pursuing recklessly a course that tended to plunge the two nations in war. But this had no effect on his determination. He was convinced of the justice of his measures, and resolutely proceeded to carry them into effect.

At length the time for holding the court arrived. It was convened at Utica, remote from the immediate scene of excitement. On trial before a learned and impartial judge, M'Leod was acquitted for want of evidence that he was concerned in the outrage. He was then sent into the British territory by Gov. Seward, under an escort, and safely delivered on the north side of the Niagara river.

This critical transaction affords a fresh illustration of Gov. Seward's firmness and sagacity. Had he listened to the advisers whose fears dictated to their judgment, and followed the cowardly policy of President Tyler, he would have disgraced both the state

and the nation in the eyes of the world. But his bold and manly course sustained the honor of the country. The fortunate conclusion of the affair restored the public mind to tranquillity, and strengthened the administration of the state in the esteem of the people.*

The Erie and Champlain canals were completed in 1825. This great enterprise of internal improvements had been brought to a prosperous completion by De Witt Clinton, against the strenuous opposition of the Albany regency. But even before these works were finished, it was seen that they could not attain the objects of their construction without the addition of lateral canals, connecting with the Susquehanna and other rivers on the south, and with lake Ontario on the north. The Erie canal was but forty feet wide and four feet deep. It was soon evident, that instead of a canal of such limited capacity, a ship canal was necessary to unite the navigation of the lakes with that of Hudson river. As early as 1835, it was found necessary to replace the locks and other structures of the Erie canal. At the same time, the state debt incurred in its construction, and that of the Champlain canal, had been virtually paid. Under these favorable circumstances, the legislature voted the enlargement of the Erie canal on a scale to be fixed by the canal board. The scale adopted was seventy feet wide and seven feet deep, with double instead of single locks, as before used. But the act limited the expenditures for the enlargement to the annual surplus of the tolls after deducting a large amount for the general purposes of the state treasury.

In 1836, the construction of the Genessee Valley and the Black River canals was decided on by the legislature. These works were intended as branches of the system of internal improvements which had previously been completed, including the Oswego, Seneca, and Cayuga and Crooked Lake and Chenango canals. A loan of three millions of dollars had been made, during the same year, to the New York and Erie Railroad Company, for the aid of their enterprise. The next year saw the progress of all these works, while the canal commissioners recommended a more vigorous prosecution of the enlargement of the Erie Canal. The recommendation was urgently renewed by Gov. Marcy and the canal commissioners in 1838. But the state was then suffering from a commercial revulsion. The comptroller, Mr. Flagg, indirectly

* See Correspondence, Vol. II. pp. 547–586.

opposed the recommendations, in a report insisting on the necessity of taxation for the support of the treasury. This report was answered by Hon. Samuel B. Ruggles, chairman of the committee of ways and means in the assembly, who showed that the increase of tolls on the canals would sustain a loan of thirty millions of dollars, reimbursing it in twenty years, or of forty millions of dollars, reimbursing it in twenty-eight years. In accordance with this estimate, the legislature, in 1838, made an appropriation of four millions of dollars for the prosecution of the enlargement, and authorized the loan of eight hundred thousand dollars on the credit of the state, in aid of the Central and other railroads.

Such was the condition of internal improvements in the state, when Mr. Seward entered upon the executive office on the first of January, 1839. The state debt was then eleven millions of dollars; but there were four millions of dollars in the treasury available for the public works, reducing the actual debt to about seven millions of dollars. Gov. Seward vigorously followed up the legislative policy of 1838. He recommended that measures should be adopted to secure the enlargement of the Erie Canal, and the completion of the lateral canals, before the year 1845.

The report of Mr. Flagg, the comptroller, who retired on the coming in of the whig administration, presented an alarming picture of debt, taxation and bankruptcy, as the consequences of perseverance in the public works. Mr. Flagg was supported by the opposition party in the legislature and throughout the state, while Gov. Seward was sustained by the whigs with great unanimity.

To increase the embarrassments of the whig administration, and to shake the public confidence in the ability of the state to complete the system in which it was engaged, it was now discovered that the canal commissioners who had recommended the new enterprises had made too low an estimate of their cost, which, instead of fifteen millions three hundred and seventy-five thousand dollars, for the enlargement of the Erie and the construction of the Genessee Valley and the Black River canals, would amount to thirty millions four hundred and forty-four thousand dollars.

The people were alarmed by this unexpected announcement. Oppressed by pecuniary difficulties in every department of business, the public was divided in opinion. The whigs maintained the wisdom and necessity of completing the public works in spite of the errors of the estimate. But the opposing party condemned

the policy in very decided terms. They predicted an insupportable burden of taxation, and ultimate repudiation as its inevitable consequence. This was the great issue between the two parties during the whole of Gov. Seward's administration.

A crisis at length came. The failure of Pennsylvania, Michigan, Illinois, Mississippi, Maryland, and other states which had largely engaged in schemes of internal improvement, produced in 1841 a general depreciation of American credit in Europe. The stocks of New York, which had been pledged abroad, were returned, glutting the market in our commercial cities. The capitalists became alarmed. With a view to prevent a further decline in securities, they combined with the opposition party against the prosecution of the public works. Their measures were met by Gov. Seward with decided resistance. In his messages to the legislature, he forcibly remonstrated against suspending the improvements already commenced. Maintaining that, in spite of the fall of public credit abroad, the true policy of the state was unchanged, he clearly set forth the evils that would ensue from the abandonment of the enterprise. But it was all in vain. Political managers took advantage of the prevailing panic to counteract the policy of the governor. The moneyed interest chimed in. His sagacious admonitions were unheeded, and the legislature in 1842, put a stop to the progress of internal improvement.

Such was the condition of public affairs on the 1st of January, 1843, when Gov. Seward resigned the administration of the state into the hands of his successor. A convention was called in 1846 to revise the constitution, containing a large democratic majority; it incorporated provisions in the constitution, prohibiting the enlargement of the public works, except under stringent, and as it was thought at the time, impracticable conditions. Still the canals, exceeding the largest estimates of the late whig administration, furnished the means for a gradual prosecution of the contemplated improvements until 1850. The whigs being in power at that time, it was ascertained that the sum of $9,000,000 would suffice to complete the public works on the original plan. It was also ascertained that this object could be accomplished without pledging the credit of the state, by a simple transfer of the surplus tolls of the canals for a short term of years. Daniel Webster, John C. Spencer, and other eminent jurists, to whom the question had been submitted, expressed the opinion that such a measure would be in

accordance with the provisions of the constitution. After a vehement party struggle, the legislature of 1851 decided on its adoption. The adverse party brought the question before the state courts, which finally declared that the law was unconstitutional. Still, few can now doubt the wisdom of the policy maintained by Gov. Seward.* It only remains to determine how the constitutional prohibitions of 1846, as expounded by the court of appeals, shall be modified so as to allow the speedy attainment of the great object.

The agency of Gov. Seward in behalf of internal improvements was by no means limited to the canal system. Upon his accession to the executive office, railroads were a recent invention. They had been adopted only to a comparatively small extent in any part of the United States. They still met with a strenuous opposition from many of the leading New York politicians. The only railroad in the state were the Harlem, eight miles in length, and Albany and Utica, ninety-five miles in length. Great efforts had been made to extend the latter road from Utica towards the West; but popular prejudice and pecuniary embarrassment were too strong for the corporations. The construction of the New York and Erie railroad had been abandoned; but Gov. Seward from the first was an earnest advocate of the improvement. With almost prophetic sagacity, he constantly predicted the success of this new mode of locomotion. His zeal in its behalf excited alarm in the conservative, commercial and political circles.

In his annual message in 1839,† he expressed himself in the following words:—

"This wonderful agent (steam) has achieved, almost unobserved, a new triumph, which is destined to effect incalculable results in the social system. This is its application to locomotion upon the land. Time and money are convertible. Husbandry of the one is economy of the other, and either is equivalent to the economy of labor. Railroads effect a saving of time and money; and notwithstanding all the incredulity and opposition they encounter, they will henceforth be among the common auxiliaries of enterprise. Happily it is not in our power to fetter the energies of other states, although we may repress our own. This useful invention, like all others, will be adopted by them, although it gain no favor from us; and they who are willing that New York shall have no railroads, must be ready to see all the streams of prosperity seek other channels, and our state sink into the condition of Venice, prostrate and powerless, among the monuments of her earlier greatness. A glance at the map would render obvious the utility of three great lines of communication by railroads, between the Hudson river and the borders of the state. One of these would traverse several of the northern counties, and reach with its

* See Vol. II. p. 183–212.

† See Vol. II. p. 183.

branches to lake Ontario and the St. Lawrence. A second, keeping the vicinity of the Erie canal, would connect Albany and Buffalo. A third would stretch through the southern counties, from New York to Lake Erie."

These confident predictions have since become magnificent realities. In his messages and speeches, Gov. Seward also urged the construction of a railroad on the banks of the Hudson, from New York to Albany. Indeed, they often manifest not a little impatience with the skepticism and want of public spirit which discouraged the undertaking of such an important enterprise.

Nor has the devotion of Gov. Seward to the cause of internal improvements been confined in its operation to the state of New York. He has never failed to cherish a deep interest in whatever was adapted to increase the business advantages, and promote the permanent welfare of the people in every portion of the Union.

In a speech delivered at Elmira in 1850, on the completion of the New York and Erie railroad, Gov. Seward related some curious personal reminiscences, in regard to the progress of internal improvements. The *chef d'œuvre* of his college life, he remarked, was an essay prepared in 1820 against the Erie canal, then in course of construction under the auspices of De Witt Clinton. He attempted to prove that the canal could never be completed, or if completed, that it would be the ruin of the state. In five years from that time the canal was finished, and boats placed on its surface, from tide water to Lake Erie. Just nineteen years after the production of that essay he found himself in the place of De Witt Clinton, urging the enlargement of the canal to double its original capacity, and the construction of three lines of railroad between substantially the same *termini* to supply the deficiency of the canal for transporting the commerce of the state. These recommendations were regarded by the public as even still more visionary than the schemes of Gov. Clinton had been in his estimation. But notwithstanding the popular incredulity, on retiring from office at the end of four years, he had the satisfaction of seeing the aggregate length of the railroads of the state increased from one hundred to eight hundred miles.

As we write these lines (1852) we see the whole stupendous scheme recommended by Gov. Seward on the eve of completion, in spite of commercial and political obstacles.

The directors of the New York and Erie railroad company, in

token of their appreciation of Gov. Seward's services, presented him with a formal vote of thanks on his retirement from office, with a ticket elegantly engraved on silver, for the free passage of himself and family on the road during life.

We have already alluded to the exercise of the pardoning power by Gov. Seward. As the subject is one of such deep interest, we will here more fully illustrate the principles which guided his course in this respect.* Combining a natural generosity and tenderness of feeling with a lofty sense of justice, he could not permit his sympathy with the unfortunate to weaken his energy in the execution of laws, which were intimately connected with the order and safety of society. He allowed no conviction, ascertained to be unjust, to stand on any pretence.

An insane man who had committed homicide in Rensselaer county, under circumstances of revolting cruelty, was induced by the court, the public prosecutor and his own counsel, to plead guilty to an indictment for murder. He was sentenced to be executed, under an arrangement between them, that in consequence of thus pleading, the sentence of death should be commuted to confinement in the state prison for life. The court and counsel urged the governor to adopt that course, on the ground that the public safety and public opinion both required the confinement of the offender. The governor answered that a man too insane to be executed, was too insane to be imprisoned for life, and discharged the offender at once.

No woman, not abandoned to vice and crime, was suffered to endure the full punishment prescribed by the law. And it must be a pleasant recollection to Gov. Seward, that in no instance was a woman so pardoned ever afterwards convicted of crime. Juvenile delinquents were pardoned for first offences not very atrocious. But in these cases, preliminary arrangements were made through the agency of their friends, for their removal from the scenes of their temptations, and their establishment in pursuits favorable to their reformation.

The possession of social advantages, instead of aiding offenders to procure pardon, was always regarded as an objection. On the other hand, great allowance was made for ignorance, orphanage, or social neglect, as presenting incentives to crime.

In the well known case of Benjamin Rathbun,† whose forgeries

* See Vol. II. p. 615.

† See Vol. II. p. 630.

were understood to have amounted to the sum of one million five hundred thousand dollars, pardon was earnestly demanded on the ground of extenuating circumstances, and the social position of the criminal. His case was warmly pressed. Petitions for a commutation of punishment were signed by more than two thousand persons, of all parties and ranks. But closing his eyes to every consideration but the claims of justice and the integrity of the law, and believing their vindication in such a case, to be highly important, Gov. Seward steadfastly refused all entreaties to extend pardon, although urged by strong political and personal friends. At the same time, pardons were granted to ignorant and obscure persons who had committed forgeries and larcenies for trivial amounts, under the excuse of absolute want, in their own case, or that of their families. The discrimination against John C. Colt,* whose case excited deep interest at the time, proceeded upon similar grounds.

Nor did Gov. Seward allow the pardoning power in his hands, to become converted to purposes of oppression. It is gratifying to know, that while the popular approbation of his administration in other respects, owing generally to political rancor, was delayed until the prejudices and passions of the day had subsided, no such delay occurred in regard to his conduct in the matter of pardons. His acts in this department of his duty, generally received immediate and wide-spread commendation. But what probably was esteemed by him as more important, was the approving testimony of his own mind. We can hardly conceive of a higher pleasure than he must have experienced in writing to Catharine Wilkins,† (a convict he had pardoned,) unless it was surpassed by his satisfaction in learning how effectual the letter had been in saving her to whom it was addressed. He no doubt enjoyed a similar pleasure in the surprise exhibited by a southern slaveholder, who applied for the pardon of his slave, convicted of crime in New York, and sent to the state prison at Sing Sing. The master urged his petition on the ground that it would relieve the state of the expense of the slave's imprisonment; and he presented the record of a case where a slave had been thus pardoned by one of the governor's predecessors. Gov. Seward answered that notwithstanding the precedent, he did not think it right to pervert a

* See Vol. II. p. 646.

† See Vol. II. p. 618.

power entrusted to him for purposes of humanity, to accomplish an act of oppression.

The same independence of character was manifested in the case of James Watson Webb.* Col. Webb had fought a duel with Hon. Thomas F. Marshall, in the state of Delaware, and was convicted under a law of this state, passed as early as 1817, and sentenced to the state prison. There had been no attempt to enforce this law, except in two cases which occurred immediately after its passage, and in these instances, the offenders were pardoned by the governor who then filled the executive chair. Afterward the law became obsolete, for want of public opinion to sustain it. Duelling was still practiced in the state of New York, notwithstanding this law was on the pages of the statute-book, and that too by men enjoying the highest distinctions and honors, including De Witt Clinton himself. It is easy to see that if the offender in the duel with Marshall, had been a political editor opposed to Gov. Seward, the enforcing of the conviction under such circumstances, would have been regarded as an act of personal and political retaliation. No one can suppose he would have enforced it under such circumstances. But Col. Webb, the offender in this case, was a personal and political friend of Gov. Seward's, and his editorial controversies had made many relentless enemies. Col. Webb having, like many others, made himself liable to the penalties of this law, probably without being aware of its existence, those enemies, unconscious, without doubt, of the motives which influenced them, demanded the rigorous application of the obsolete statute. The governor showed, in this instance, that he was not afraid to do in the case of a friend, what all men who knew his impartiality and magnanimity, would have expected him to do towards an adversary. He pardoned Col. Webb. In the case of Rathbun, he would not pardon, because, among other principal reasons, the offender had moved in high circles and had powerful friends. In the case of Webb, he pardoned notwithstanding he occupied an elevated position and was surrounded by influential friends. In both instances he showed his coolness and courage in resisting popular clamor, when satisfied that justice demanded such resistance.

Gov. Seward's principles in the exercise of the veto power, may be learned by reference to his messages† delivered on the several

* See Vol. II. p. 661. † See Vol. II. pp. 374, 379, 426, &c.

occasions when he assumed its exercise. The D'Hauteville case will serve as an illustration.

A lady of large wealth, a resident of Boston, while travelling in Europe, had married a French gentleman, by the name of D'Hauteville, of greater respectability than of fortune. One child was the fruit of this connexion. She separated from her husband, and returned to America, in 1846, bringing her child with her. D'Hauteville appeared in Boston, and demanded her return to Europe, insisting, in case of refusal, on the custody of his child. The friends of the lady, designing that she should take refuge in the state of New York, procured a hurried passage of an act by the legislature of this state, then in session, providing that where an American woman should be married to a foreigner who should propose to require her with his children, to remove to Europe, the Court of Chancery should have power to interpose and take charge of the children and their fortune. A veto from Gov. Seward arrested the passage of this bill,* upon the ground that no nation could wisely or justly make a discrimination in its laws regulating parental or other domestic relations, on the ground of the alienage of either of the parties—a decision the wisdom and soundness of which few can doubt.

With the return of an opposition to the legislature, came, of course, a desire for the benefits to be derived from the enjoyment of the state printing. An act was passed removing Thurlow Weed from the office of state printer, which he held, under a contract authorized by law. Gov. Seward interposed his veto† promptly, on the ground of the inhibition in the Constitution of the United States of the passage of laws by the states, impairing the obligation of contracts.

But while he thus exercised the veto power to arrest inconsiderate and unconstitutional legislation, he declined interfering in cases of pure legislative discretion, as has been seen in his action on the New York registry bill, and in his consent, against his own opinions, to the act of 1842, suspending the public works. In such cases, however, he insisted on the right of stating the grounds of his qualified approval of bills, in the message communicating the executive assent. It must be left to impartial public opinion, free from the bias of temporary excitement, to decide between

* See Vol. II. p. 374. † See Vol. II. p. 426.

him and the legislature, on their refusal to receive such messages and enter them on their journal.*

In his administration of the state government, Gov. Seward took a firm and dignified attitude against the institution of slavery. He labored to clear the statute-books of every provision which authorized holding a man in slavery, in any form, or on any pretext. His devotion to the principles of freedom at length accomplished the work, which had been so nobly commenced by the admirable statesman, John Jay, in 1795. The law, which permitted a master travelling through the state with his slaves to retain them for the space of nine months, was repealed through his influence. It was this repeal by which the slaves in the recent Lemon case, who had been brought from Virginia to the city of New York in order to be shipped to Texas, were saved from perpetual bondage.

Gov. Seward also procured the passage of an act by the legislature, allowing the benefit of a jury trial to persons claimed as fugitive slaves. He defended this right with his usual fervid eloquence, and it was mainly through his efforts that it was incorporated in the policy of the state. At a subsequent period, when the fugitive slave bill was debated in the United States Senate, he labored to have a similar provision engrafted in its details.

An act was also passed, at his instance, prohibiting state officers from participating in actions for the recovery of fugitive slaves, and denying the use of the public jails for their detention. He held that these were actions under the constitution and laws of the United States, and should, therefore, be executed only by the United States marshals and judges in United States courts, and that imprisonments they might order should be in United States prisons, if such could be found. Although the Supreme Court of the United States pronounced these laws to be unconstitutional, they were clearly founded on the eternal principles of right and justice. They will form an enduring memorial of the wise humanity of Gov. Seward, and of his heart-felt devotion to the spirit of freedom, as embodied in the declaration of independence.

It was through his agency, moreover, that a law was enacted in 1840, for the recovery of free colored citizens of New York, who should be kidnapped into slavery. This law authorized the gov-

* See Vol. II. p. 411.

ernor to employ an agent for the aid of such persons, securing their restoration to liberty. It was under the provisions of this act, that H. B. Northrup, Esq., of Washington county, N. Y., in Jan., 1853, procured the liberty of Solomon, a colored man, long a member of his family, who twelve years ago had been inveigled to the city of Washington and there kidnapped and sold into slavery.

Among Gov. Seward's last official recommendations to the legislature, was an amendment of the constitution of the state, by which the freehold qualification required of citizens of the African race, as a condition of exercising the right of suffrage, should be abolished. He based this recommendation on the principles of natural justice. And he urged the necessity of granting the right of suffrage to every class of persons subject to the laws of the state, and the safety with which it could be thus extended where a system of universal education had already been established. It is to be regretted that on the revision of the constitution, in 1846, this recommendation was found to have anticipated public sentiment for an indefinite period of time. But that Gov. Seward's recommendation on this point will yet be adopted and incorporated into the constitution of the state, there cannot be a doubt.

The course of Gov. Seward in regard to these measures was an agreeable surprise to the abolitionists, who had failed to obtain any pledge from him during the preliminary canvass. His noble position in the "Virginia Case," was adapted to win the admiration of every lover of freedom.*

The outlines of this case may be briefly given as follows. In 1839, a vessel from Norfolk, Va., on arriving near the port of New York was found to contain a slave, who had secreted himself in the hold. He was taken and conveyed back to bondage. Three colored seamen belonging to the vessel, who had expressed their sympathy with the fugitive, were charged with having conveyed him out of the state by stealth. Affidavits were made to that effect in Norfolk. A requisition, based on these affidavits, was made by the lieutenant governor of Virginia upon the governor of New York, for the surrender of the accused, in accordance with the provisions of the constitution of the United States, and the act of Congress of 1793, concerning fugitives from justice. Before the requisition was presented to Gov. Seward, the parties had been

* See "Virginia Controversy," Vol. II. pp. 449-516.

arrested in the city of New York, but having been brought before Robert H. Morris, the recorder of the city, on a writ of *habeas corpus*, were discharged by him on the ground of the insufficiency of the affidavits to justify their detention. The lieutenant governor of Virginia, however, persisted in the requisition, demanding that the governor of New York should surrender the persons as fugitives from justice. Gov. Seward replied that they had been discharged from arrest in due course of law, and that the affidavits in support of the requisition were informal and insufficient. At the same time he admitted that these affidavits could be replaced by new affidavits, or a formal indictment. Disdaining, however, to stand upon mere light technicalities in so grave a cause, he met the question on the broad and universal principles which it involved. He took the ground, that the crimes contemplated by the constitution of the United States in its provisions authorizing the demand of fugitives from justice, between the several states, were not such crimes as depended on the arbitrary legislation of a particular state, but such as were *mala in sese*—crimes which could be determined by some common standard, as the concurrent sense of the several states—the common law received by them all alike, or the universal sentiment of civilized nations. No state, he argued, could force a requisition upon another state, founded on an act which was only criminal through its own legislation, but compared with general standards, was not only innocent, but humane and praiseworthy. Thus, the aiding of a slave to escape from bondage was in itself an act of virtue and humanity. No statute could pronounce such an act a crime, without a perversion both of reason and justice. Still further, though slavery was left by the constitution of the United States to the exclusive jurisdiction of the states where it existed, it was carefully excluded from Federal recognition. Hence no state was bound by the constitution to recognize slavery or any of its incidents in another state, so as to create an obligation for the surrendry of persons charged with offences in violation of laws enacted by slave-holding states for the maintenance of slavery. This reasoning was applicable to all cases, and not alone to those which grew out of slavery. By the laws of New York, for instance, as in several other states, there was no legal imprisonment for debt. But in Pennsylvania this barbarous custom was still sanctioned by the laws; hence, in that state, resistance by a debtor to a civil officer charged with process was a

felony. The governor of Pennsylvania had made a requisition on Gov. Seward, under the Federal constitution, for the surrender of a citizen of New York, indicted in Pennsylvania, for resistance to a sheriff charged with an execution against his person. Governor Seward refused to comply with the requisition, on the principles before stated. While the decision was acquiesced in by the state of Pennsylvania, Virginia withheld its assent in the case presented from that state.

A correspondence ensued which continued during the whole of Gov. Seward's administration. The legislature of Virginia appealed from the governor to the legislature of New York. The public mind was profoundly moved by this novel and important discussion. Although not made an affair of strict party division, the whig legislatures of New York, more or less explicitly, sustained the position of the governor.

Upon the election of an opposition legislature in 1842, the assembly took a different ground, and requested Gov. Seward to communicate their opinion to the legislature of Virginia. In a firm, but respectful manner, he declined to comply with the request.* The soundness of his views on this subject received a striking illustration in subsequent requisitions by the governors of Louisiana and Georgia, demanding the surrendry of fugitive slaves on the most frivolous pretexts as fugitives from justice; in one case, on the indictment of a female slave for stealing the gown on her back, valued by the grand jury who found the indictment, at twelve and a half cents: and in the other, on the indictment of a person for stealing a female slave from her master, and stealing the calico dress and trinkets worn upon her person, when the entire transaction consisted at most in his persuading the slave to make her escape from bondage.

The state of Virginia, combined with other states, resorted to retaliatory measures designed to injure the commerce of New York. But this produced no change in the decision of Gov. Seward, nor in public opinion concerning the controversy. The judgment which will ultimately be passed upon his conduct in this affair by the moral sentiment of mankind, is indicated in the construction placed by the British ministry on the article of the recent treaty in regard to the extradition of fugitives from justice—an article of similar purport to the extradition article in the Federal constitu-

* See Special Message, Vol. II. pp. 385-433.

tion. It was stated by them in the house of commons, that they should not deem themselves bound to surrender any person charged with a crime which should appear to have been committed by the offender in effecting his own escape, or that of another from slavery. In connection with this subject, it may be added that Gov. Seward always maintained the unconstitutionality of imprisoning colored citizens of the free states in the slave-holding states, when not charged with actual crime. In case of such imprisonment of citizens of New York, he employed agents at the expense of the state to obtain their restoration to freedom.

The condition of Gov. Seward's private affairs, which had been affected by the general depreciation of property incident to the financial embarrassment of the country, made his acceptance of a re-election in 1840 a matter of personal sacrifice. But it was deemed necessary by his political friends. His own mind regarded the subject in a different light. He had been elected by a diminished majority. Several hundreds of whig votes were given for other candidates. To him this was a proof of dissatisfaction on the part of no inconsiderable number of persons; many had been disappointed in their hopes of office; others were alienated by his devotion to reform; his policy in regard to universal education was greatly misapprehended: all these causes led him to doubt whether a division of the party would not be produced by his remaining in the executive chair, although no one, in fact, ever possessed a stronger hold on the confidence of a great political party than he did at that moment. Besides, Gov. Seward foresaw more clearly than many of his friends, the progress of reaction in regard to internal improvements. The opponents of the policy were rapidly gaining ground; it would be necessary, at another election, to present a candidate to the whig party against whom there was no considerable prejudice. Accordingly, in Jan., 1841, Gov. Seward announced his determination, under no circumstances, to again become a candidate for the executive office. The announcement took the public by surprise, especially as it was made at a time when he was regarded as having triumphed over all opposition, and gained a firm footing as a leader of the whig party. His last annual message * was considered the ablest official production of his pen. Nor is it too much to say that few, if any, abler documents have ever issued from the executive chair of New York.

* See Vol. II. p. 297.

The election of Gen. Harrison in 1840, who had been nominated for president in preference to Mr. Clay, on the ground of superior availability, induced the friends of the latter distinguished leader to believe that he would have been successful if he had received the nomination. This conviction, which became almost universal, produced a settled determination to secure Mr. Clay's nomination for the canvass of 1844. The policy was to foreclose the question by popular movements throughout the United States as early as the spring of 1842. Gov. Seward did not assent to the wisdom of the plan. He yielded his private views, however, to the prevailing sentiment of the whig party. But he could not be persuaded to place himself at the head of the movement, with the prospect of a re-nomination for governor. On the contrary, he frankly pointed out to his friends the reasons against their course. The question of the annexation of Texas, he argued, had become inevitable. Under the excitement produced by its discussion, the anti-slavery interest had grown up in the state, from one thousand in 1838, to two thousand five hundred in 1840, in opposition to Gen. Harrison and himself, neither of whom was regarded with special prejudice by the political abolitionists. It was more than probable, that the premature nomination of Mr. Clay, who was already severely censured by the abolitionists, would increase their vote at the state election of 1842, from five thousand to fifteen thousand, at the expense of the whig party. This would ensure the loss of the state to the whigs, as well as of the presidential election of 1844.

Other counsels, however, prevailed. Gov. Seward persisted in declining a re-nomination. Mr. Clay was the avowed candidate of the whigs for the presidency. The result was the increase of the abolition vote to sixteen thousand. The whigs were, accordingly, defeated. Their candidate for governor, Hon. Luther Bradish, a man of unexceptionable character, well known to the public, and universally popular, lost his election by a decided vote. William C. Bouck received a majority of twenty-two thousand, and the administration of the state reverted to the hands of the opposition.

On the last day of Gov. Seward's official term, his accounts with the treasury were definitely settled; and on the first day of January, 1843, he introduced his successor, Gov. Bouck, to the people of the capitol, exchanging with him appropriate courtesies on the

occasion of his inauguration. These courtesies, so well adapted to allay animosities and to cultivate a better tone of feeling, were at that time without precedent. They made a favorable impression upon the public mind. With that successor, and all others in the executive chair, of whatever politics, Gov. Seward maintained relations of mutual respect and personal friendship.

How strong a hold his benevolent action during his official term had taken upon the classes most generally overlooked, neglected and oppressed, may be seen by referring to his replies to letters and addresses elicited by his retirement.*

On retiring from his official duties, Gov. Seward returned immediately to his residence in Auburn. In one week's space of time, he was seen engaged with as much calmness and assiduity in his profession, as if he had never been removed out of it. Having enjoyed the honors of the highest post in his native state, to the full satisfaction of a noble ambition, and in a manner to leave the deep impress of his character on its laws and institutions, he was not only content, but anxious to turn again to the calls of a profession, which he ever pursued with all the ardor of an amateur.

In 1843, Gov. Seward, in his retirement at Auburn, had the gratification of a visit from Ex-President John Quincy Adams, between whom and himself the most intimate relations of friendship had long existed. The meeting was one of great cordiality and affection. It has been said, and we believe with truth, that on that, as well as on other occasions, Mr. Adams expressed his confidence that the great work of human rights which he would be obliged to leave unfinished, would devolve more completely on Gov. Seward, than on any surviving statesman. Thus far, at least, that expectation, so honorable to Gov. Seward, has not been disappointed. The following pages contain fragments of correspondence between Mr. Adams and Gov. Seward, together with orations and speeches by the latter, which, while they illustrate his own reverence for Mr. Adams, have been regarded as presenting their distinguished subject in his just attitude before the world.

On the occasion of Mr. Adams' death, Gov. Seward was invited by the legislature of New York, to pronounce a eulogy† on his character and services. It was one of the most faithful and

* See Vol. III. † See Vol. III. p. 75.

eloquent of the numerous discourses which were prepared on that great national bereavement. Its closing sentences, instituting a comparison between the death scenes of Napoleon and Adams, are scarcely surpassed in pathetic eloquence by any modern production. Believing that a popular biography of that eminent statesman would be more useful in disseminating and inculcating his principles, than any other contributions that he could make to his memory, Gov. Seward applied himself to the preparation of such a work. With the aid of a competent friend,* it was brought out in 1849, in the midst of many absorbing professional engagements. The author's expectations were fully realized. More than thirty-two thousand copies of the work have been already published, and its circulation has been continually increasing.

At the annual commencement of Union College in 1843, Gov. Seward was invited to deliver the address before the Phi Beta Kappa Society, of which he is a member. He accepted the appointment, and took for his theme, "The Elements of Empire in America.† The address was worthy of his manly and vigorous intellect, and his extensive literary attainments. It presented a comprehensive view of the resources of the American Union, and pointed out the grandeur of its destiny, under the principles of justice and freedom, on which it was founded. By special invitation, he repeated the address at the commencement of Amherst College, the same year.

During the ensuing six years, Gov. Seward devoted himself to the duties of his profession with brilliant and growing success. At first, his practice was confined to the various courts of the state, in which he received liberal retainers for his services. After the lapse of about two years, however, his peculiar aptitude for subjects involving scientific and mechanical principles gained him a large and lucrative practice in the trial of patent cases in the United States courts. He was thus brought into contact with the most distinguished jurists of the country, whom his breadth of intellect and sound legal learning enabled him to meet on equal terms. At the same time, his genial and generous disposition, and the natural frankness of his manners gave him great influence with a jury, and made his services indispensable as counsel in criminal cases. His zeal in the defence of persons unjustly

* Rev. J. M. Austin. † See Vol. III. p. 11.

accused was so great, that he has been known not only to give his best efforts gratuitously, but to furnish a large amount of funds from his own means in their behalf.

In 1845, Gov. Seward was engaged in a libel suit in the Supreme Court of New York, in the case of J. Fenimore Cooper vs. Greeley & McElrath, publishers of the New York Tribune. He was counsel for the defendants. It was deemed a case of much importance, involving as it did, the rights of newspaper publishers to utter their opinions, as to the character and acts of men holding positions of influence before the public. Gov. Seward's argument* in this case, was a sound and searching production. It sifted thoroughly and to the bottom, the whole subject of libel, the modifications which that law appears to have undergone by judicial construction in this state, and the rights of the press and the people: the right of free thought and free speech, on the one hand, and the right of exemption from vituperation and libel on the other—all were brought under review, and discussed with clearness and effect. The public and the press will acknowledge their obligations to Gov. Seward for the ability and force with which the freedom of speech and of opinion was illustrated and defended on that trial.

At the solicitation of citizens of Cooperstown, N. Y., Gov. Seward left the state fair at Auburn, in 18—, to defend a person of politics adverse to his own, charged with the crime of murder. When he had the pleasure of securing a verdict which reduced the crime to manslaughter, in opposition to the opinion of the court, he declined to receive any compensation for his successful effort in behalf of the prisoner, although it was tendered by the jury who felt themselves indebted to him for showing how they could rightfully vindicate the laws, and by it save a human life.

In 1847, Gov. Seward was solicited by certain humane persons in Cincinnati, with a tender of compensation, to be raised by subscription, to appear before the Supreme Court at Washington, in behalf of John Van Zandt, who was charged with aiding certain fugitives in an attempt to escape from slavery. He consented to undertake the case. The argument† which he delivered on this occasion presented a masterly and unequaled analysis of the fugitive slave law of 1793, and the provisions of the federal constitu-

* See Vol. I. p. 391. † See Vol. I. p. 476.

tion in regard to the subject. It also stated most of the important objections now urged against the present fugitive slave law. In this case, also, Gov. Seward declined all compensation.

In Sept. of the same year, Gov. Seward was invited by the Irish citizens of the city of New York, to deliver a eulogy on the life and character of Daniel O'Connell.* An immense assemblage of adopted and native born citizens, listened to him with the highest admiration. Like all similar efforts from the pen of Gov. Seward, it was a production at once chaste and eloquent, full of historical and classical allusions, with many passages of the most thrilling pathos, and did ample justice to the principles and deeds of the great Irish orator.

In 1845, a convict of the state prison at Auburn, Henry Wyatt, was indicted for the murder of a fellow-convict. His attempts to procure able counsel, had failed for want of ability to make the usual recompense. On the day but one preceding his trial, he invoked Gov. Seward's interposition for his defence. His appeal was promptly accepted. During the trial, many striking incidents were disclosed, which showed that the crime was committed in a morbid state of mind. The case clearly fell within a class which medical writers designate under the general name of moral insanity. Gov. Seward procured, at his own expense, the scientific witnesses necessary to present the case fairly to the jury. He followed in his defence with an argument of great power and pathos. The jury divided and could not agree upon a verdict. His second trial at the next Circuit Court, was eagerly anticipated, with full confidence that he would be acquitted. This event, however, was destined to become the occasion of difficulties such as few advocates have been called to encounter. After the close of the first trial, Gov. Seward left Auburn on a professional tour to Washington and the southern states.

While the case of Wyatt was yet the topic of discussion in Auburn and its vicinity, a singularly revolting occurrence took place, which served to increase the agitation of the public mind. This was the massacre of nearly a whole family by William Freeman, a negro of twenty-three years of age, who had been six months before discharged from the Auburn state prison, after an imprisonment of five years. The bloody scene occurred at the residence of John G. Van Nest, a wealthy and highly respectable

* See Vol. III. p. 44.

farmer, and a friend and former client of Gov. Seward's, whose house stood in a secluded grove, near the suburbs of Auburn, on the shores of the Owasco Lake. Having armed himself with carefully prepared weapons, Freeman entered the dwelling at ten o'clock at night, and slew Mr. Van Nest, his wife, then pregnant, a child sleeping in its bed, and the mother-in-law of Van Nest, Mrs. Wyckoff, an aged woman of seventy. The hired man, who came to the defence of the family, was severely injured and left for dead. The murderer, being disabled by a wound from old Mrs. Wyckoff, desisted from further violence, and made his escape. Taking a horse from the stable, he rode him a few miles, when he stabbed the animal, which had become incapable of travelling. He then stole another horse, which proved to be more fleet, and pursuing his flight, rode to the house of a relative about thirty miles from Auburn. There he offered the horse for sale, and proposed to take up his residence, until he should recover from his wound. He was traced and arrested, in a few hours, and brought back to the scene of butchery, and into the presence of the surviving witnesses. On being questioned, he at once confessed the crime, not only without apparent remorse or horror, but with frequent and irrepressible fits of laughter. The public indignation was so excited at this awful tragedy, that it required all the dexterity of the police to keep Freeman from being torn to pieces on the spot. He was at length committed to the jail, by a successful stratagem, but the crowd could with difficulty be prevented from forcing the doors. They were appeased only by the assurance of one of the judges of the county, that Freeman should be tried and executed, and that there should be no plea of insanity and "no Governor Seward to defend him."

None of the usual motives appearing on the part of Freeman for the commission of such a desperate act, it was rumored that he had been present during Wyatt's trial, and had learned from the argument of Gov. Seward that responsibleness for crime might be avoided on the ground of insanity. This became the popular explanation of the horrible catastrophe. The public feeling ran high against Gov. Seward. Even threats of personal violence were openly made. The excitement became so intense, that when he returned from the south, his family and friends were surprised that on reaching the depot at Auburn, he was permitted to pass to his residence without outrage.

In this state of affairs, the governor, Silas Wright, was induced to issue an order for a special term of the Court of Oyer and Terminer, to be held at an early day, by Judge Whiting, to dispose of the cases both of Wyatt and Freeman. During the interval, public tranquillity was restored, by the assurance of Gov. Seward's law-partners, while he was absent, that he would not engage in the defence, it being well understood that no other advocate would consent to give his services to so odious a cause.

Gov. Seward was unmoved by the tempest of excitement around him. With characteristic courage and calmness, he proceeded to examine the subject, as a philanthropist and lawyer. He felt as keenly as any one, the enormity of the deed. But impelled by a strong sense of duty, he was determined to look thoroughly into the case of the wretched negro. At his solicitation, accordingly, three intelligent and humane citizens of Auburn made several visits to Freeman in jail. They reduced their conversations with him to writing, and submitted them to Gov. Seward's inspection. The result of the investigation, together with other facts which had become known to him, convinced him that whatever was the condition of Freeman's mind prior to the homicide, he was then sunk into a state of dementia, approaching idiocy.

The court began with the trial of Wyatt. Gov. Seward, aware of the intense and aggravated excitement which prevailed, applied for a postponement of the case, but without effect. A week was consumed without finding a single impartial juror. The attorney general, John Van Buren, was sent for, with haste. On his arrival, the court reversed the principles by which the trial of jurors had ever been conducted, as laid down by Chief Justice Marshall, and adopted a standard that permitted jurors to be sworn although they confessed to a bias, or an opinion formed of the prisoner's guilt. The obtaining of a juror, even under this unprecedented decision, was regarded as a triumph, in a controversy in which not only the people of Auburn and its vicinity, but of the whole state took sides for or against Gov. Seward.

A trial conducted under such circumstances, could have but one result. At the expiration of a month, Wyatt was convicted and sentenced to be executed. Moral insanity was thus, so far as the verdict of a jury could go, judicially abolished. Gov. Seward devoted four weeks of uninterrupted labor to this case, without

the slightest pecuniary compensation, and at an outlay of no small sum from his own pocket.*

The Freeman case still remained to be disposed of. It came on immediately after the conclusion of Wyatt's trial. An immense assemblage had convened in the court-house at Auburn, to witness the opening of the case. Until that moment, it was not known whether Freeman would have any counsel. It was supposed the court would assign him some junior member of the bar; but it was considered doubtful if one could be found of sufficient nerve to accept the appointment, and attempt even a formal and weak defence. The excited multitude were not backward in loudly propounding the inquiry, "Who will now dare come forward to the defence of this negro?" "Let us see the man who will attempt to raise his voice in his behalf!" Nor did they hesitate in uttering threats of vengeance against any member of the bar who would plead the case of so vile a wretch. But there was one seated within the bar in that crowded court-room, who heeded not these menaces. A being in human form was in distress, and peril before him. He asked himself, what does humanity and duty require at my hands, in this case? And having received from conscience a prompt and decisive reply, he unhesitatingly proceeded to the labor thus enjoined upon him, without delaying to consult interest, or popular favor, or any of the consequences that might ensue. In vain family, personal and political friends, influential citizens, and members of the bar, besought him not to interfere, and call down upon himself the indignation of the populace. In vain was he reminded of the long, weary, and expensive trial to which he had just devoted himself, to the neglect of professional engagements, and the peril of health—in vain was he forewarned of the still more tedious, costly, and exhausting nature of the present case, should he engage in it. A higher law and a louder voice called him to the defence of the demented, forsaken wretch, who stood insensible of the vengeful gaze of a thousand eyes, and he felt that he had no alternative.

* Wyatt, after receiving his sentence, anxious to afford Gov. Seward some compensation, offered to narrate his "life" for publication, the profits of which should go to Gov. S., and it was taken down for that purpose. But on examination it was found to be of doubtful moral bearing and influence, and on that account, Gov. Seward refused to permit its publication, or participate in any profits arising therefrom. A spurious copy, however, was afterwards surreptitiously obtained, and brought out in a pamphlet, which yielded a net profit of $600 to the publisher.

Freeman was arraigned on four indictments for murder. When asked whether he pleaded guilty to the first indictment, he replied, "Yes!" "No!" "I don't know!" "Have you counsel?" was the next inquiry. "I don't know," responded the prisoner, with a stupidity which astonished even those who were most eager for his death. "Will any one defend this man?" inquired the court. A death-like stillness pervaded the crowded room. Pale with emotion, yet firm and unflinching as steel, Gov. Seward, to the amazement of every person present, arose and said, "May it please the court, I appear as counsel for the prisoner!" It would be impossible to describe the excitement which followed this announcement, or the threatening demonstrations which it called forth. David Wright, Esq., of Auburn, a well known lawyer and philanthropist, volunteered as associate counsel in defence of Freeman. The attorney general, John Van Buren, conducted the prosecution.

Gov. Seward presented to the court in bar of a trial, that the prisoner was then insane. Issue was taken on this plea, and a trial was directed by the court, on the question of Freeman's sanity at that time. After protracted efforts similar to those which took place in Wyatt's case, a jury was impanneled to try this preliminary question, but they were already evidently fixed in their convictions of the sanity and guilt of the prisoner.

Gov. Seward's political party, throughout the state, shrinking from the unpopularity in which he had involved himself, in a proceeding universally denounced by the press, abandoned him. While these proceedings were pending, the delegates to the convention called to revise the constitution of the state of New York, assembled at Albany. The whig party was supposed to be compromised by Gov. Seward's known bias in favor of extending the right of suffrage to the colored population. The result of the election of delegates had been an overwhelming defeat of the whigs. The exclamation was universal, that whatever might be the fate of the whig party hereafter, Gov. Seward was effectually lost.

Still he did not falter, but sternly persevered in what he conscientiously believed to be the line of his duty, and was the only person engaged in these transactions, except his client, who was calm and unmoved. The trial, on the question of the prisoner's sanity, continued two weeks, and was contested by Gov. Seward

with an energy, perseverance and skill, that drew plaudits from his most violent opposers, and that could not have been exceeded had millions of dollars depended on the issue. His argument at the summing up, for eloquence, pathos, sound legal views, and thorough knowledge of human character, has rarely been excelled at the American bar. At length, when the jury retired, it was at once found that eleven were agreed that the prisoner was sane. The twelfth declared his unchangeable opinion that Freeman, although sane enough to know right from wrong, was yet so unsound in mind as not to be responsible for his actions. The disagreement and discussion in the jury-room being privately communicated to the court, information was returned to the jurors that the verdict would be accepted, although it gave no direct response to the question at issue, and was couched in equivocal language. They accordingly brought in the following verdict—"We find the prisoner at the bar sufficiently sane to distinguish between right and wrong." In an earnest and elaborate argument, Gov. Seward protested against the reception of this verdict, as it was illegal, pointless, and irrelevant. But it was pronounced by the court to be sound and satisfactory, and Freeman was forthwith put upon his trial for the murders charged against him.

He was directed to stand up and plead to the indictment. But it was evident to every spectator that the wretched imbecile had not the faintest conception of the nature of an indictment, or of the object of the scenes around him, in which he unconsciously bore so conspicuous a part.

We shall be pardoned for introducing here the following extract from a vivid description of the scene which transpired at the reading of the indictment, by a clergyman of Auburn, who attended the trial, and was an eye-witness of the proceedings:

The District Attorney, (Luman Sherwood, Esq.,) with the bill of indictment in his hand, called out—"William Freeman, stand up." He then approached quite near the negro, for he was very deaf, and read the indictment. At the conclusion, the following dialogue ensued:

Dist. Att.—Do you plead guilty, or not guilty, to these indictments?

Freeman.—Ha!

D. A.—(Repeating the question.)

F.—I don't know.

D. A.—Are you able to employ counsel?

F.—No.

D. A.—Are you ready for trial?

F.—I don't know.

D. A.—Have you any counsel?

F.—I don't know.

D. A.—Who are your counsel?

F.—I don't know.

At this stage of the proceedings, Gov. Seward could no longer restrain himself. He buried his face in his hands, and burst into tears—and seizing his hat, he rushed from the court-room, perfectly overwhelmed with his feelings. And who that had but a common share of sympathy, could fail to be most sensibly moved at witnessing such a procedure on a subject so awful, allowed before one of the highest tribunals of the land. An instrument read to this idiotic creature, pregnant with his death, requiring him to respond to the same, when the wretched being had not *the first glimpse* of what it all meant, or what effect it would have upon him. D. Wright, Esq., who had assisted Gov. Seward on the preliminary trial, arose after the reading of the indictment, and declared he could not consent longer to take part in a cause which had so much the appearance of a *terrible farce*. But Gov. Seward, (who had returned to the room,) immediately sprang to his feet and exclaimed—"May it please the Court—*I shall remain counsel for the prisoner until his death!*" At the solicitation of the court, Mr. Wright finally consented again to take part in the cause, and assist Gov. S.

As the commission of the acts charged were not denied by the prisoner's counsel, the only question at issue was his *sanity* at the time of the homicide. Gov. Seward labored with unwearied assiduity to establish the insanity or dementia of Freeman, of which he was himself satisfied beyond a possible doubt. At great expense, defrayed by himself, he summoned into court the most eminent medical professors and practitioners from various and extreme parts of the state, whose intelligent and unbiased testimony fully sustained the ground on which he urged the defence.

At length after a laborious and exhausting trial of two weeks' duration, aided by the abhorrent nature of the crime, the overwhelming popular clamor, and various decisions of the court, subversive in many instances, of established rules in capital trials, the attorney general succeeded in procuring from the jury a verdict of *guilty*.

Gov. Seward's efforts in behalf of the prisoner were thus defeated. But he had faithfully discharged his duty, and the responsibility of holding an insane or idiotic person responsible for his deeds, rested not with him. Freeman was adjudged and condemned as a sane man. Gov. S. had no more to offer in that place, and the court was suffered to proceed in passing sentence upon the prisoner.

As in reading the indictment, so in the passing of the sentence, a scene occurred unparalleled, we venture to affirm, in any court of justice. Instead of standing in the dock as is customary, the

Judge directed the prisoner to be brought to his side upon the bench. The Judge then said to him :—

"The jury say you are guilty. Do you hear me?"

"Yes," replied Freeman.

"The jury," repeated the Judge, "say you are guilty. Do you understand?"

"No," said the negro.

"Do you know which the jury are?" inquired the court.

"No!" answered the prisoner.

"Well! they are those gentlemen down there," continued Judge Whiting, pointing to the jurors in their seats—"and they say you are guilty. Do you understand?"

"No!"

"They say you killed Van Nest. Do you understand that?"

"Yes!"

"Did you kill Van Nest?"

"Yes!"

"I am going to pronounce sentence upon you. Do you understand that?"

"No."

"I am going to sentence you to be hanged. Do you understand that?"

"No."

The prisoner was then led back to the dock, and the Judge proceeded to pronounce sentence of death upon him. This he did in the form of an address read to the audience—thus tacitly admitting, what was evident to every person in the immense multitude present, that Freeman knew not a word he uttered, or the strange scene thus transpiring. He was conveyed to his cell as unconscious of the sentence that had been pronounced upon him, as an unborn child.

A bill of exceptions was prepared by Gov. Seward, but the Judge refused a stay of proceedings. It was however, subsequently granted by a Judge of an appellate court, and in October following, on a full review of the whole case, a new trial was granted. But Freeman, who had proved himself a monomaniac in the committal of the homicide, now sunk so low in dementia, that Judge Whiting, before whom he was tried and convicted, pronounced him incompetent for another trial, and refused to proceed with the case. A few weeks later, the wretched and imbruted William Freeman passed from earth to the presence of a more wise and merciful Judge.

A post-mortem examination was made, by the most eminent physicians in the state, which showed that Freeman's brain was diseased and destroyed. The publication of Gov. Seward's second argument* in this remarkable case, an effort of the highest and

* See Vol. I. p. 409.

most attractive character, unsurpassed in eloquence, logic and legal ability, had already wrought a reaction in public opinion, which was rendered complete and universal by this post-mortem examination. Now, there is no one act of Gov. Seward's life, for which society is more grateful to him than that of having saved the community from the crime of the judicial murder of Freeman—an ignorant colored boy who had been confined in the state prison for an offence of which he was innocent, and driven to lunacy by a sense of the injustice of his punishment, and by inhumanity in the exercise of penitentiary discipline.

Before leaving this case, it is due to Gov. Seward to insert another extract from an article by the clergyman in Auburn, to whom allusion has already been made, written immediately after the conclusion of the trial, and published in the journals of the day. It describes the impression made at the time by the high-minded and humane course of Gov. S. on a class of individuals who did not allow retaliatory emotions to cloud their judgment, or harden their feelings, against the forsaken creature who committed the dreadful homicide. The sentiments it utters in regard to the part taken by Gov. Seward in this remarkable case, we are confident will find a response in every unprejudiced and humane heart.

The conduct of Gov. Seward in this painful affair reflects the highest honor upon him. Shocked, horrified, though he was at the awful tragedy which had been enacted, and which had destroyed a family with whom he was on terms of intimate friendship, yet seeing the blood-stained, wretched negro deserted by all, even those of his own caste and color, and becoming abundantly satisfied that he was an insane, irresponsible being, he nobly volunteered in his defence. Moved alone by the sympathies of his generous soul, and a high sense of duty to the weak and defenceless—in opposition alike to the entreaties of friends ever watchful of his reputation and interests, and the imprecations of an incensed multitude, eager that the blood of a demented creature should be shed—he boldly threw himself between the victim and those who would hurry him in hot haste to an ignominious death! Without fee or compensation of any description, for four weeks he toiled through the sultry hours of the summer day, far into the shades of night—sparing no time, no strength, no ability—contesting every inch of ground, with an industry, a perseverance, an unyielding faithfulness, that wrung commendation even from those most exasperated against his idiotic client. And all this for whom? For a NEGRO!—the poorest and lowest of his degraded caste—and who though seated directly by his side, did not know that he was his counsel—was not even aware that one of the mightiest intellects of the age, one of the noblest spirits of the world, was taxing his utmost energies in defence of his life!

In his eloquent appeal on the preliminary trial respecting Freeman's *insanity*, Gov. Seward alluded to the excitement which had been kindled against him for the *faithful-*

ness with which he defended both Wyatt and Freeman, in the following thrilling passage :

"In due time, gentlemen of the Jury, when I shall have paid the debt of nature, my remains will rest here in your midst, with those of my kindred and neighbors. It is very possible they may be unhonored—neglected—spurned ! But perhaps years hence, when the passion and excitement which now agitate this community shall have passed away—some wandering stranger—some lone exile—some *Indian*—some *Negro*—may erect over them an humble stone, and thereon this epitaph—'He was Faithful !' "

What spectacle more interesting can be witnessed on earth than was presented on this trial ? A statesman of the most commanding talents—one who had received the highest honors the people of his native state could bestow upon him—one whose well-known abilities call around him crowds of wealthy clients, able to reward his valuable services with streams of gold—turning from all these, at the call of humanity, and going down unrewarded, yea at great pecuniary expense to himself, to the defence of this forsaken, pitiable son of Africa ! Unrewarded, did I say ? A richer reward than silver or gold is his ! Wherever the tidings of this strange trial shall be wafted throughout this civilized world, they will carry the name of Seward to be embalmed as a sacred treasure in the hearts of all lovers of humanity—of all who sympathize with the degraded and enslaved Ethiopian—of all who pity those whom God has deprived of reason !

In 1849, forty persons residing in the interior of the state of Michigan, about sixty miles from Detroit, were indicted on a charge of burning the railroad depot in that city. The Michigan Central Railroad Company adopted, and carried forward the prosecution. Eminent lawyers to the number of ten, were employed by the company to sustain the indictment; and every other lawyer of mark, in that state, except one, was retained by the prosecution, to prevent him from engaging in defence of the prisoners. The offence, connected with other circumstances, had produced an excitement scarcely less than that which has been described in the case of Freeman.

The prisoners then in jail, represented these facts to Gov. Seward, and appealed to him to defend them, stating that in consequence of the wealth and influence arrayed against them, they were deprived of the opportunity of obtaining proper counsel at home. Although Gov. Seward had then withdrawn, as he supposed, for ever from jury trials, he seems to have believed that he could not leave those persons, whether innocent or guilty, to suffer for want of defence, without a reproach to the profession to which he belonged, and of which humanity is the highest ornament. He repaired, therefore, to Detroit, arriving after the trial had commenced. It lasted *four months*—the longest judicial trial that has occurred in this country. Almost without compensation, he persevered in defence of the unhappy prisoners to

the end, in the midst of an excitement which allowed no charity either there or elsewhere, for the motives by which he was governed. He had, however, the reward of success, so far as to procure the acquittal of twenty-eight persons accused.*

Of the character of Gov. Seward's professional labors and conduct in the department of arguments at the bar, illustrations will be found in his pleas for the liberty of the press, and against the fugitive slave law, and for the rights of inventors, contained in the present collection.†

The retirement of Gov. Seward from office, permitting party heats to abate, and freeing his views on public questions from the influence of prejudice, was followed by a growing reaction of popular sentiment in his favor. He had been opposed by the abolitionists, because he withheld his countenance from their extreme measures, and by the enemies of abolition, because of his sympathy with the cause. Adopted citizens had been led to distrust the sincerity of his efforts in their behalf, and protestants saw danger to religion in his zeal for equal justice to the foreigner and native. The friends of internal improvement accused him of lukewarmness, while the opponents of that system predicted the impoverishment of the state from the extravagance of his zeal. But now all these prejudices were softened. His character and his opinions were presented in a truer light. His sincerity was placed above the reach of suspicion. No one questioned his rare abilities. While new friends were constantly won, his old friends adhered to him with affectionate fidelity. Though abstaining from the exercise of political influence, he was regarded as the leader of his party in the state, and his labors were claimed for every movement in behalf of its interests.

Upon the organization of the Native American party, which commenced with the burning of Roman Catholic churches, and aimed at a complete change in the naturalization laws, the adopted citizens with one accord, appealed to Gov. Seward for sympathy and protection. His speeches and letters, during the agitation of this subject, show his vigorous resistance to principles which he had always regarded as political heresies. In this respect, his course has been uniform and consistent, from the beginning.

Notwithstanding Gov. Seward was overruled in his opposition to the nomination of Mr. Clay for the presidency, in 1844, at the

* See Vol. I. page 523. † See Forensic Arguments, Vol. I. p. 391.

instance of the whig party, he took an active part in the canvass of the state, until the day of the election. He spared no pains to remove the objections of the anti-slavery voters, and of the adopted citizens, to the whig candidate. If strenuous energy and powerful eloquence could have insured success, Henry Clay would have received the vote of New York. But the only result of these efforts was to prevent an increase of the desertion from the whig ranks, which was experienced in 1842.

With his uncompromising hostility to the extension of slavery in the United States, Gov. Seward opposed the annexation of Texas to the last, and condemned the Mexican war, which he had predicted as its consequence. Still, during the continuance of the war, he urgently maintained the duty of supporting the government by liberal appropriations of men and money.

While the Oregon question was pending between the United States and Great Britain, he agreed with John Quincy Adams that our government should give notice to Great Britain of the termination of the joint occupancy of that territory. Notwithstanding all the threats and alarms of war, he exerted his influence with the members of Congress to sustain the administration in the adoption of that measure.

The subject of internal improvements in the state, together with the conflicts of interest about the patronage of the federal government, produced a division as early as 1843 in the ranks of the so-called New York democracy. The rival factions came soon to designate each other as hunkers and barnburners. While each admitted the necessity of some amendments to the constitution, they could not agree on the details. No proposal to that effect, accordingly, could obtain the assent of two successive legislatures, or a two-third vote, which was necessary in the last instance, for submitting a proposition to the people. The barnburners, who sought for more radical reforms than their opponents, were thus led to agitate the call of a convention for the entire revision of the constitution. This measure was discountenanced by leading whigs, who regarded it as revolutionary, and of dangerous tendencies. Gov. Seward took the opposite ground. He argued that such a convention would present an opportunity to the whigs to take the sense of the people upon the measures proposed by the barnburners against internal improvements. It might also secure the advantage of decentralizing the political power of the

state, by dividing it into single senatorial and assembly districts, and transferring the appointment of all judicial and administrative offices from the governor and legislature to the people, as well as entrusting all matters of local legislation to county boards of supervisors, instead of the legislature at Albany. It would, moreover, permit an attempt to extend the right of suffrage, without a freehold qualification, to the African race. The views of Gov. Seward were generally adopted. The convention was called with great unanimity by all parties. Although the whigs had but a small majority in that body, all the proposed reforms were carried, except the latter. The sceptre which had so long been wielded by the Albany regency was broken, and the concentration of political, judicial, and moneyed power, on which their empire was built, was henceforth impossible.

The recurrence of the presidential election in 1848, found Gov. Seward consenting to the nomination of Gen. Taylor, whom he regarded, at that time, as the only available candidate. He had greater confidence in the success of Gen. Taylor, as his name had been brought before the people, in connexion with the presidency, on account of his brilliant achievements in the Mexican war, to which he was understood to have been opposed. His election, therefore, would serve to rebuke those politicians who had plunged the country in war for selfish purposes, and would thus inculcate lessons of moderation and peace to rulers. Gov. Seward favored his nomination, moreover, because the previous course of the candidate warranted the belief that he would veto no act of Congress establishing governments which excluded slavery in our newly-acquired Mexican territory. With these views, Gov. Seward devoted himself with great energy to the canvass in the states of New York, Pennsylvania, Ohio, and Massachusetts, in behalf of Gen. Taylor, and of such members of Congress as might be relied upon to support his administration and to extend the ordinance of 1787, on the principle of the Wilmot proviso, over the Mexican territories.

The election of Gen. Taylor to the presidency seemed to be a favorable indication for the policy of freedom, that had been so earnestly defended by Gov. Seward. Connected with the return of a whig majority both in the national house of representatives and the legislature of New York, that event was supposed to guaranty the restriction of slavery within its existing boundaries

and the establishment of a free domain along the Gulf of Mexico, and across the continent to the Pacific Ocean. Under these circumstances, Gov. Seward was elected to the Senate of the United States, in place of Hon. John A. Dix, whose term was about to expire. The vote of the legislature, which was given in February, 1849, stood—for Gov. Seward, 121, and for all others 30. This was an unusually large majority, there being no serious opposition to his election. He entered the thirty-first Congress, together with thirty-three other whig members, and one democratic member, from the state of New York, who, in accordance with the prevailing sentiment of the state, were all understood to agree with him in the policy of circumscribing the region of slavery.

On arriving at Washington, in February before the commencement of his senatorial term, Gov. Seward found Congress engaged on an amendment to the civil and diplomatic appropriation bill, proposed by Mr. Walker, of which the effect would be to abrogate the laws of Mexico for the prohibition of slavery. This amendment had already passed the Senate, but Gov. Seward, with characteristic energy, exerted himself to secure its defeat in the House. His efforts were successful; the amendment was lost in the house, after a long and excited debate; the senate receded from it, on the last night of the session.

The sagacity of Gen. Taylor, on his accession to office, was signally displayed in his choice of Gov. Seward as one of his most intimate friends and counsellors. Familiar with all the elements of northern society, with every aspect of public opinion, and the feelings and interests of the people—conversant with civil affairs as a jurist and statesman—cherishing a lofty sense of honor and a generous sympathy with popular rights—courteous and tolerant towards his opponents, though rigidly faithful to his convictions—inspired with a glowing sentiment both of patriotism and humanity—and ardently devoted to the support of the federal Union,—he was eminently qualified to promote the welfare of his country in the responsible function of adviser to the president. With a delicate sense of propriety, while thus enjoying the confidence of Gen. Taylor, he declined being placed on any important committee of the Senate, lest it might be supposed, on some occasions, that he acted authoritatively in his behalf. He was unwilling to embarrass the administration by any sectional prejudices

against himself, but quietly to bring the aid of his wisdom and experience to the support of its head.

He concurred with Gen. Taylor in his invitation to California and New Mexico to organize state governments and apply for admission into the Union at the next session of Congress. The suggestion of the President was adopted. As Gov. Seward had anticipated, California appeared by her senators and representatives at the commencement of the congressional session in December, 1849, with a constitution excluding slavery. It was understood that New Mexico was preparing to come with a similar constitution.

To Gov. Seward belongs the authorship of the phrase—*the Higher Law*—which has acquired a fame that will never die. It was used by him in his speech in the Senate, March 11, 1850, on the admission of California into the Union.

This speech was unanimously acknowledged to be a bold, manly, and profound production. Lucid and consecutive in argument, learned in historical and philosophical illustrations, with a chaste elegance of diction, it was not surpassed for sound statesmanship and an acute exposition of the principles of natural and constitutional law, by any speech delivered in the Senate on the absorbing subject of freedom in the territories.

The enemies of Gov. Seward at once accused him of maintaining the existence of a Higher Law, in opposition to the Constitution, by which the new domain of California was devoted to justice, liberty, and union. But this was a flagrant misrepresentation of his language, which embodied a truth, that none but the grossest materialists and skeptics can call in question. No enlightened ethical philosopher, no man of ordinary religious feeling and conscientiousness will deny that there is a law higher than political constitutions and human legislation, "the law which governs all law—the law of our Creator, the law of humanity, justice, equity, the law of nature and of nations." Nor will it be doubted, that in case of a conflict between divine and human law, "we ought to obey God, rather than man." But it was not the purpose of Gov. Seward on that occasion, to repeat a principle so plain as this. The phrase as used by him on the floor of the Senate would hardly seem capable of such misconstruction as has been given to it. We quote his words, precisely as they were spoken:

"It is true, indeed, that the national domain is ours. It is true it was acquired by

the valor and with the wealth of the whole nation. But we hold, nevertheless, no arbitrary power over it. We hold no arbitrary authority over anything, whether acquired lawfully or seized by usurpation. The Constitution regulates our stewardship; the Constitution devotes the domain to union, to justice, to defence, to welfare, and to liberty. But there is a Higher Law than the Constitution, which regulates our authority over the domain, and devotes it to *the same noble purposes.* The territory is a part, no inconsiderable part, of the common heritage of mankind, bestowed upon them by the Creator of the Universe. We are his stewards, and must so discharge our trust as to secure in the highest attainable degree their happiness."

Every intelligent reader will perceive that while Gov. Seward devoutly recognizes the Law of God, and its paramount claims both on individuals and nations, he was far from asserting a contradiction between that law and the American Constitution on the subject in question. On the contrary, he declares that they agree in demanding freedom and justice for the new domain. Can any wise statesman, can any far-seeing patriot, can any friend of human improvement deny the soundness of this position?

But let us not be misunderstood. In vindicating Gov. Seward from the aspersions which were brought upon him by the expression alluded to, it is far from our intention to disclaim for him a belief that the obligation of human laws is founded on their harmony with the principles of eternal justice. He is no adherent of the superficial and wretched philosophy which derives the distinctions of morality from the caprices of opinion. In common with the greatest thinkers of all ages, he traces the obligation of right to the uncreated wisdom of the Deity. With Plato and Cicero, in ancient times, with Bacon, Hooker, and Cudworth, at a later date, he recognizes the bosom of the Deity as the seat and fountain of law—"whose voice is the harmony of the world." This ennobling idea pervades the writings of Gov. Seward,—it is the pivot of his personal character, as well as of his public and legislative career. Among other instances of its operation, we find it in an argument, in 1847, relating to the fugitive slave law of 1793, where he uses the following striking expression: "Congress has no power to inhibit any duty commanded by God on Mount Sinai, or by his Son on the Mount of Olives."*

During the discussion of the "Compromise Bill," Gov. Seward addressed the Senate, July 2, 1850, in a speech† remarkable for the vigor of its dialectics, its comprehensive and sagacious states-

* See Forensic Arguments, Parks vs. Van Zandt, Vol. I. † See Vol. I. p. 44–110.

manship, and its noble zeal for freedom, as well as for the appositeness of its classical illustrations, and the polished beauty of its style. His exposition of the dangers and evils of the compromise is in a strain of masterly eloquence. After appealing to the wisdom of his auditors to adopt the true principle of conciliation by gradual reform, he closed his remarks with one of those genuine touches of poetry which often flash over the severity of his argumentative discourse. "We shall then realize once more the concord which results from mutual league, united councils, and equal hopes and hazards in the most sublime and beneficent enterprise the earth has witnessed. The fingers of the Powers above would tune the harmony of such a peace."

This speech was succeeded by speeches on "New Mexico," and "Freedom in the District of Columbia," in which Gov. Seward displayed his usual elevation of thought in applying the principles of universal justice to the maintenance of human rights. In January, 1851, Gov. Seward delivered a speech, on the question of "Indemnities for French Spoliations," giving a luminous analysis of the whole subject, accompanied with ample historical proofs, and eloquently enforcing the necessity of justice and good faith to national honor. The state that would be prosperous must be free from the burden of violated engagements. The people that would dwell in safety, without fear for fireside, fane, or capitol, must practice an austere and pure morality—must embody in their daily lives the spirit of the eternal law through which "the most ancient Heavens are fresh and strong."

The next great topic, on which Gov. Seward addressed the Senate was the "Public Domain." In his speech on this subject, Feb. 27, 1851, without maintaining the absurdity that the land of any country ought to be or can be equally divided and enjoyed, he shows the evils arising to the highest interests of society from great inequalities in landed estates. His views of the gratuitous distribution of portions of the public domain to actual settlers, although they may fail to win the sympathy of politicians, are marked by equal humanity and good sense, and will challenge the attention of all intelligent friends of social progress.

In Dec. 1851, Gov. Seward submitted a resolution to the Senate, in favor of a cordial welcome by Congress to Kossuth, to be communicated by the president as the executive organ of the United States. His sentiments in regard to the illustrious champion of Hungary are expressed in two speeches on the subject, which

handle the objections of the opponents to the resolution with a good-humored severity of argument, and a remarkable terseness of language, while they present the claims of Kossuth to the admiration of American freemen, in a style of fervid eloquence that is equally touching in its pathos and convincing in its appeals.

During the following February, the discussion of Mr. Foote's resolution, declaring the sympathy of Congress with the exiled Irish patriots, Smith O'Brien and Thomas F. Meagher, came up in the Senate, when Gov. Seward took occasion to express his deep interest in the welfare of Ireland, enforcing his views with his usual vigor of argument and liveliness of illustration. This was succeeded in March by a speech on "Freedom in Europe;" in which he presents an admirable sketch of the Hungarian revolution, discusses the neutral policy of Washington in regard to foreign nations, explains the true character of intervention, and argues at length in its defence. The tone of this speech is lofty and severe, and in some passages rises to an almost Miltonic grandeur.

The next speeches of Gov. Seward in the Senate were on "American Steam Navigation," "Survey of the Arctic and Pacific Oceans," and "The American Fisheries." A peculiar value attaches to these speeches from their eminently practical character, the variety and accuracy of the statistics which they embody, their clear and cogent reasonings on the facts they present, the intimate knowledge which they exhibit of the commercial and industrial relations of the country, and the enlightened and glowing patriotism with which they are inspired. To the admirers of Gov. Seward they are of no less interest, on account of their fine illustrations both of his mental habits and his personal character. In the action of his intellect, patience and depth of research, a constant aim at the integral unity of the subject, a logical grouping of particulars in reference to a future pregnant inference, and a singular self-possession in the exercise of judgment, ever serve as the basis which underlies the expression of a masculine and generous enthusiasm and an earnest-hearted sympathy with all that is beautiful in the progress, or sacred in the hopes of collective humanity.

The speeches of Gov. Seward in the Senate since the commencement of the current year (1853) have been on questions of great practical interest. In his remarks in the debate on "Continental Rights and Relations," he pays a graceful and feeling tribute to

the character of John Quincy Adams, whom he claims as the author of the policy on re-colonization, generally ascribed to President Monroe. Passing to the discussion of the policy itself, he gives his reasons for holding to its substantial truth, while he protests against the manner in which it was brought in issue on that occasion. The speech is gravely and forcibly argued, though not without incidental touches of effective satire.

In February, the important question of our "Relations with Mexico and the Continental Railroad" was debated in the Senate. The speech of Gov. Seward on that subject abounds in lucid views of national policy.

On the proposal to abolish or suspend the duty on foreign railroad iron, Gov. Seward addressed the Senate in one of his most characteristic speeches. This was, followed by a speech on "Texas and her creditors," which closes the list of his senatorial efforts at the time we are now writing. Both of these speeches are marked by the admirable union of statistics, general reasoning, and lofty sentiment, of which the texture of his deliberative eloquence is composed.

It will be seen that Gov. Seward has not been an idle spectator of the proceedings of the Senate. His voice has been raised on the most momentous questions in those halls "where debate either wins a great influence or utterly wastes the speaker's power." No one can doubt the effect of his active participation in the senatorial strife on his own fame. His speeches have not only been heard with profound respect in the august forum, where they were delivered, but they will be read with instruction and delight by the most intelligent portion of our republican population.

Rich in significant lessons of statesmanship, abounding in the treasured wisdom of years of study and practice in affairs, breathing a spirit of the most expansive humanity, and adorned with the classic embellishments of a susceptible and refined taste, they form an interesting memorial of the progress of American letters. Gov. Seward, we are persuaded, will henceforth occupy as enviable a place among the writers of his country, as he has long held among her practical statesmen.

In addition to his elaborate speeches in the Senate, Gov. Seward has often taken an incidental part in important debates, a record of which is preserved in the present collection. After the decease of Henry Clay and Daniel Webster, he delivered a tribute to the memory of each of those illustrious statesmen, in chaste and dis-

criminating sketches of their characters. For justness and vigor of conception, elevation of feeling, and felicity of diction, these are scarcely inferior to the best specimens of mortuary eloquence in our language.

Gov. Seward has now been four years in the Senate of the United States. Of his conduct in that exalted station, the speeches and debates now published, afford the most authentic illustration. Amid the heated excitements of the day, he has been found calm, watchful, and earnest, on the post of duty. Trustfully biding his time, he has cherished no anxiety to vindicate his reputation from the aspersions of his opponents, save by a uniform course of well-doing. In the most ardent zeal of senatorial debate, he has never lost sight of the decorum belonging to the place. Often the subject of violent personalities, he has preserved the courtesy of the gentleman and the dignity of the legislator. No provocation has induced him to violate the amenities of refined social life, nor to reply to ill-mannered abuse by a retort in kind.

His fidelity to his political associates has often been the subject of remark. During the administration which followed that of Gen. Taylor, to be a friend of Gov. Seward was to be proscribed. The price of such partiality, to an office-holder, was invariable removal. But that administration came into power through the action of the whig party, from which he derived his trust. Hence, it never failed to receive the support of Gov. Seward. He has neglected no suitable occasion to defend it; he has never been one of its assailants. It is said, and we believe truly, that he has promptly sustained all its nominations to office.

But the most remarkable feature in his public career is his consistent adherence to principle. Guided not by a low worldly policy, or motives of secular expediency, but by the radiant light of ideal truth, his course has been like the path of a noble ship on the ocean, faithfully steering by celestial luminaries. His past history presents the best assurance of his future activity. Whatever the sphere in which he may be placed, it is certain, that he will bring exalted talents to the performance of the humblest as well as the noblest duties, postponing all private interests to his love of humanity, and seeking as the highest boon of a manly life, the realization of truth, justice, and love, in the institutions of society.

SPEECHES IN THE SENATE OF NEW YORK.

SPEECHES

IN

THE SENATE OF NEW YORK.

THE MILITIA SYSTEM.*

FEBRUARY 11, 1831.

I AM aware that the amendments I have submitted are such an innovation upon the existing militia system, as to require if not an apology for offering them, at least an explanation of the necessity for a change of some kind. Complaints long and loud have been made of the defects of the system, and the oppressive burden it imposes upon the people; these complaints have, at length, reached the executive ear, and have drawn from the governor a recommendation to the consideration of the legislature. I do not know that I should have ventured to suggest the amendments, had not the committee of the Senate, after mature deliberation, reported a bill which can be regarded in no other light but as going immediately to change the whole system, and, in the result, to abolish it. This bill originates in the deep conviction, I doubt not, of the committee, that *some* law must be proposed to relieve the people from the trouble of military duty under the present organization. I confess that it is not my object to destroy the system; but, at the same time, that I would relieve the people from the burden it imposes—I would, if possible, preserve and improve the militia, and would elevate it so that it might be what it ought to be—the ornament of the country, and the safeguard of the rights and liberties of the people. Whether the plan which I have proposed is the proper one to effect so desirable an object, is a question for the consideration of the committee. I confess that

* This appears to have been Mr. Seward's first parliamentary effort.—ED.

it is not perfect. And after explaining and defending it, I shall be willing to listen to, and adopt any better plan which shall be proposed by gentlemen of greater experience than myself.

The course of the remarks which I propose to make will lead me briefly to delineate what, in my judgment, the militia system ought to be; to consider the evils and defects of the present system, and to state the manner in which I suppose the plan contained in my amendments is calculated to correct and remedy those evils and defects.

What the militia system was designed and ought to be is to be learned from a consideration of the objects of its establishment, and the provisions in the Constitution concerning it. The provisions of the Constitution show that the framers had in view the possible exigencies following:

1st. The attempt by the government or its officers to exercise tyranny over the people;

2d. Resistance to the government and laws;

3d. Invasion:

And, in some way, the Constitution intended to provide by a national militia for the public safety and individual security, in the event of one or all of the exigencies I have mentioned.

There is no doubt that the framers of the Constitution intended to secure, as two fundamental principles of government:—The right of the people, at all times, to keep and bear arms; and, secondly, the principle—That a portion of the people (not limited) should be enrolled, organized, armed, and to some extent disciplined. These principles were the basis of the militia system.

Having reference, then, to the objects of its establishment, it needs little argument to show that the militia system was intended to be, and should be such an one as—

1st. Should embody the necessary force, and no more.

The necessary force, in order to answer its purposes; and no more than the necessary force, because an augmentation beyond the necessity would be oppressive to the people, and would tend to embarrass and defeat the whole system.

2d. Such as should insure the advantage of that force, being well and sufficiently *armed*, which is expressly derived from the language of the Constitution.

3d. Such as should insure some degree of discipline, if not a

rigorous and perfect discipline, at least such as would preserve the integrity of the system.

4th. Such as should insure such an organization of the force thus to be embodied, armed and disciplined, as would render it susceptible of being called by the government into action, and directed, in the event of any of the exigencies contemplated by its founders.

If I was asked what are the defects of the existing system, I should answer—and I submit to the committee whether the answer would be too broad—that the defects consist in a destitution of every one of the qualities which I have mentioned as requisites of the system, as it was intended to be.

The militia force is too great and unwieldy. By the laws of the United States and this state, a force is embodied, or attempted to be embodied in this state, consisting of more than 186,000 troops, and the whole militia of the United States must be about 1,600,000 on paper—an army more numerous than followed in the train of the Persian invader, the Macedonian or the Roman conqueror; more numerous than the swarms of the Crusaders, the legions of the Corsican, or the hordes of the Autocrat of all the Russias. In a country so situated as to be removed beyond almost the possibility of invasion by foreign enemies, in a land where the laws and the government were maintained, not by the sword and the bayonet, but by the virtue and intelligence of the people, it would be preposterous to admit the possibility of any exigency which could require the action of so vast a military force.

I know of but one advantage to be derived from maintaining the organization of a force so immensely disproportioned to the possible demands of the state in even its most troublous and perilous times—which is that the division of military duty in actual service would render the duty less oppressive to the citizen. But surely this advantage cannot be so great as to justify, in order to secure it, a defeat of all the other objects of the organization. That this immense expansion, if I may so apply the word to the militia force, does tend to defeat all the other objects of the system, will follow from the considerations that: 1st. It is known and felt by the militia themselves to be unnecessary; hence, arise clamor and disgust. 2d. The drilling of the militia is enormously expensive, without the possibility of corresponding improvement.

The equivalent provided in this state for neglect to perform military duty is four dollars for each individual, and all experience proves that this equivalent is about equal to the actual expense of the performance of the duty. Here, then, is in an odious shape a poll-tax greater, in very many if not in most instances, than the citizen upon whom it falls pays for the support of government.

3d. It prevents not only improvement, but checks all military pride, and is destructive of all subordination. The necessary subdivision of it, and the consequent multiplication of militia offices, render those offices valueless. Consequently, they are frequently sought and filled by men incompetent to their duties; and it is a notorious fact, which speaks loudly on this subject, that militia commissions are sought, held for a week, a month, or a year, and then resigned, for the purpose of obtaining exemption from military duty.

But the numerical force is even greater than is necessary to secure the advantage before mentioned of an equal division of military service. Let us suppose a case to have happened in this state, requiring the militia to be called into actual service. 10,000 troops would be as large a force, I think, as would be required on any such occasion. By a law of the United States, the same militia-men cannot be retained longer than three months, at any one time, in actual service. If you make a new levy of 10,000 men every three months, it will be four years and six months before your whole 186,000 shall have been called into service.

Again, 50,000 of the United States militia would be as large a number as the general government could on any emergency require, at a given time, in actual service. If you make new levies of 50,000 each, at the expiration of every successive three months, your militia will not all share in the duties, privations, and perils, in a period less than eight years.

Again, experience has proved that, owing to the defective organization of this immense force, it cannot be called upon even to the limited extent contemplated by the Constitution. While I admit and glory, as does every true citizen, in the achievements of portions of the militia during the last war, it still is a matter of history that the government, for a vigorous prosecution of the war, at almost all points, relied upon the regular or enlisted troops.

The *second* object which, as I before stated, was had in view in

the organization of the militia, was that the force embodied, whether great or small, should be well and sufficiently armed. Has this object been secured? Look at the arms exhibited at any regimental muster, and you will perceive that they have but one of the qualities requisite, that is, the *variety* of warlike weapons—guns, blunderbusses, rifles, fusils, muskets, with flints and without them, some wanting locks, some wanting stocks, and some wanting barrels, to say nothing of the arms of the *elite*—walking-canes, whip-stocks, and umbrellas. I believe I have seen sixty muskets in a company, of which not ten would speed a bullet.

The next great defect of the system is the want of discipline. The officers command without skill, the men obey with reluctance and evasion. The whole business of a day solemnly and with pomp and ceremony set apart for military inspection, exercise and review, consists in a hasty tossing the musket from the soldier to the inspector, and back again, a march into the field, and forming crookedly upon a straight line, the troops passing once in front of the general, the general passing once in front of the troops; and it is a day of uncommon achievement, if, before the sun has set, there is found time to march out of the field, with the same military order observed in marching in. There is no improvement, no subordination, and what renders the case still worse is, that often, very often, public opinion discountenances alike a desire of improvement and attempts at discipline, and even encourages insubordination.

The last defect to which I have occasion to refer, is, that the organization is such that the militia, or any considerable portion of it, cannot, without great and almost insurmountable difficulty, be called into actual service. The men hardly know the officers, and the officers, with the aid of their muster-rolls and rosters, can hardly find their men. I remember, though I was very young at the time, that, during the last war, a portion of the militia in that part of the state in which I then resided, were drafted for the defence of the city of New York. Of those who were drafted, those who were pleased to go, went; those who were pleased to remain, did not go. Occasionally a sergeant and guard patrolled the country in search of the delinquents, but those delinquents either were not found, or escaped on their march to quarters. At the close of the war, if I recollect right, a court-martial imposed a fine upon those of the delinquents who could be found, to be served with

process; those who had no means to pay the fines, escaped by their insolvency—and those who had means, resorted to higher tribunals, which abolished the court-martial and its sentences.

Such are some of the prominent defects of the militia system as it now exists. It gives me no pleasure to describe them—and especially in this place. But when the public mind has become disgusted with the system, and public opinion will no longer sustain it, I deem it an imperative duty to know the defects, in order, if possible, to devise a remedy, and, failing to do so, then to decide whether the system thus irremediably defective, shall, with all its errors and imperfections, be abolished.

In the course of my remarks, if it has become necessary to state the causes of these defects in the militia system, I will, to avoid repetition, barely recapitulate them. They are the unnecessary extension of the system. The consequent irksomeness of the duty imposed; the want of skill and experience in the officers; the want of uniform, and discipline, and subordination in the ranks, and as a consequence of all these, the almost entire destitution of military spirit. By all classes it is felt to be burdensome and unprofitable. All classes, even the Friends, who being so small a portion of the whole population, and who, otherwise, by their enterprise, and industry, and economy, might well be allowed to purchase indulgence to their conscientious scruples against the acts of war, are not unfrequently seen lying in jail to expiate the offence of refusing, for conscience sake, their quota of contribution to the expense of this system, so fair in theory and on paper—so useless and oppressive in operation.

It is next in the order of my remarks, to speak of the plan which I propose as a remedy for the evils I have mentioned; which is—

1st. To reduce the number of the militia who shall be required to perform military duty, to some much smaller number—say 50,000, 60,000, or 70,000; the last being, I believe, about the number of uniformed troops, in the present organization, and I would, I confess, prefer to sustain those whose public spirit and military ardor has induced them to assume their present organization.

2d. To make the performance of military duty voluntary, as far as practicable.

This force, if it consist of but 50,000 men, may be subdivided into 5 divisions, 10 brigades, 50 regiments, and 500 companies.

After what I fear has been a tedious detail of the evils and defects of the present system, it will be necessary to state, but very briefly, the advantages of the proposed system. They would be—that the force could be well and easily organized. It could be uniformed —disciplined to some considerable extent—not only the officers, but the troops could be improved in military skill. All this could be done, because there are nearly, if not quite, the requisite number of young men, who would be able and willing to encounter the expense of filling up the ranks. And if necessary that legislative encouragement should be afforded, it could be done to any requisite extent at much less expense than is now drawn from the yeomanry of the country to sustain the present defective system. Men would then seek and obtain the offices in the militia, who would have the ability and spirit necessary for the discharge of the important duties attached to them.

Adopt such a system, and I feel assured that the militia, instead of being degraded, ridiculed and despised, will be respected, honored and valued; men enough will *volunteer* to take its most subordinate ranks, from the patriotic desire to be among those upon whom the republic will rely for its defenders, and from the honorable ambition for military promotion.

But it has been observed that we should be assuming the legislation which properly belongs to Congress. I do not think so. I am of opinion that the whole change proposed falls within the scope of the powers reserved by the Constitution to the states. And while I admit that Congress may prescribe this as a general plan, I cannot see, in the absence of any actual legislation by Congress, why the state should not, if it were expedient, remodel the system. I think no hope can be entertained that Congress will take any measures upon the subject. The general government has suffered the militia system to deteriorate year after year, and even now looks quietly on, while, in several states of the Union, measures are in actual progress, practically to abolish the whole system. Besides, in these days of high-toned assertion of state rights, I doubt not the attempt by Congress to legislate upon the subject, would be defeated by the jealousy of the state sovereignties.

Why, then, should not the state of New York take the lead in this reformation of the militia system? Will it not be worthy of her character for enterprise and patriotism?

We have one inducement, at least, to do so—the consideration that legislate unwisely as we may, *we can make the system no worse than it is.*

I do not wish to be understood that the amendments I have offered are sufficiently perfect to carry into effect the plan I have suggested. I have not offered them under such a belief. The only object in offering them is to enable me to bring the subject before the Senate to the end that, if my views should receive favor with the Senate, a plan may be perfected, containing the requisite provisions in detail. I offer the amendments only as an approximation to the system I wish to see adopted; and I believe that, if no nearer approach shall now be made, the incorporation of the principles contained in the amendment will not be without value. For it will reduce the numerical force of the militia one half; it will relieve one half of the people now suffering under the oppression from the useless burden imposed upon them, and it will regain some portion, if not an half, of the public confidence for the militia, as the means of public defence.

Mr. SEWARD then examined and answered some objections to the system he proposed, derived, as was said, from the laws of Congress relative to the militia.

Finally, the time has come to decide whether the militia system shall be preserved or abandoned. It can be no longer maintained without radical alteration and amendment. And though members may wish to preserve it, they will find it as hopeless as the attempt to retain the snow which melts more rapidly with the pressure of the hand.

I have looked upon the system with veneration, while I have felt and acknowledged the justice of the popular complaint against it; and under the influence of mingled solicitude arising from both these causes, I have long endeavored to find a remedy for the evils I have mentioned. Of all which I have imagined and heard suggested, this appears to me most feasible, as well as most likely to be effectual. It is with a degree of diffidence I have ventured to give my views on the subject, which only can be overcome by a sense of my responsibility, before I can give a vote which will go to the eventual abolition of the system; to offer the best exertion in my power to procure it, and, at the same time, to meet the requirements of the people. I have always felt that the militia system is a relic of the age of the Revolution too valuable to be idly thrown away; that it is a strong and beautiful pillar of the

government which ought not to be rudely torn from its base. But if no effectual remedy can be found in legislative wisdom, I shall feel myself bound, though with reluctance, to vote at all hazards for such a bill as will redress the evils the system imposes, and to trust to the exigencies of invasion, insurrection, or oppression, for a regeneration of the military spirit which brought the nation into existence, and will, if restored in its primitive purity and vigor, be able to carry us through the dark and perilous ways of national calamity yet unknown to us, but which must, at some time, be trodden by all nations.

ELECTION OF MAYORS BY THE PEOPLE.

APRIL 22, 1831.

Introductory Note.—The question before the Senate was the mode of choosing or appointing mayors of the several cities of the state. Motions having been made in favor of their appointment by the governor, by the governor and senate, and by the legislature, Mr. Seward offered an amendment proposing that they be elected by the people. He then proceeded to address the committee in support of his amendment; he spoke at some length, and assigned various reasons in favor of his amendment. He was decidedly opposed to conferring any more appointing power either upon the governor, or the governor and senate, or the legislature; and the amendment of the gentleman from the second (Mr. Tallmadge) proposed to do, either or all of these things. He contended that it was a sound principle, adopted by the framers of the Constitution, taking the appointment of mayors out of the power of the legislature.

At another stage of the proceedings, Mr. Benton's amendment being under discussion, which was that the mayors of all the cities in the state should be elected or appointed *in such manner as the legislature shall direct*, Mr. Seward offered the following remarks.—Ed.

What is the state of the question before the Senate? The provision required by the city of New York is, that the mayor of that city shall be elected by the people. The amendment under consideration proposes that the legislature shall hereafter have the right to prescribe the manner in which that officer shall be elected or appointed.

It is admitted that the office of mayor is one of local interests, duties and responsibilities, and that it is, in the abstract, right and proper that the mayor should be elected by the people in that city. Why, then, should not this provision, conceded to be abstractly right and proper, be adopted? Is it to be rejected on the ground of distrust of the people? No such distrust is avowed, and I am therefore bound to believe none is indulged. Only one argument has been urged in support of the amendment, which was, that it was expedient that the mode of election or appointment of this officer should be made a subject of legislative dis-

erection, in order that it might from time to time be varied according to the wishes of the people of that city. This argument supposes that the present application is based upon slight grounds, and that the city of New York would not long be content with any one mode of election or appointment. This presumption is altogether unwarranted. So far as concerns this application, we are distinctly informed that it is made because by the late alteration in the charter of that city—the Common Council was divided into two houses—and the mayor was vested with the power of negativing by his veto the ordinances of those houses—and it is submitted to us that the officer with whom this power is vested ought not to derive his office from that body, or be responsible to it in derogation of whose power he is to exercise his veto. Who will deny that there is merit in this proposition? Who will contend that the governor of this state, who is invested with concurrent legislative powers, should by derivation of his office or otherwise be made amenable to the legislature. This application, then, so far from being groundless, is correct in principle, and in harmony with the structure of our government. And what grounds are there for the presumption that the people of the city of New York will again require an alteration in the mode of electing their mayor if the present application shall prevail? Under the old Constitution of this state, the mayor was appointed by the council of appointment. Was the city of New York then restive and clamorous for change? No; that city acquiesced until the loud and deep-toned and universal popular complaint against the corruptions of the council of appointment demanded its abolition, and a new depository of the appointing power of the state. Then, in accordance with the more democratic principles which prevailed at that day, the appointment of mayor was confided to the immediate representatives of the people of the city in their Common Council. Have the people of that city since been unquiet on this subject? No, sir; they have never asked for a change, until by another radical alteration in the powers and duties of this office, and in the organization of the Common Council, a necessity has arisen for the application now made.

Again, sir, the tendency of all our principles of government is to democracy; the new Constitution took the appointment from the council of appointment, and conferred it upon the immediate

representatives of the people. There is but one more change before you reach absolute democracy; that is the one now proposed, and conceded to be proper. Are gentlemen afraid that the people, once invested with this power, will come back again and sue us to relieve them from its responsibilities? Such an instance would be anomalous in the history of government.

But we are told that the appointment or election of this officer ought not to "be bound up in constitutional bonds;"—that it ought to be left to the legislature. Sir, I think if there be any right of the people which ought to be bound up in constitutional bonds, it is the right of electing their magistrates. If there be any right belonging to the people of the city of New York which ought to be bound up "in constitutional bonds," it is the right guarantied to them of electing, either by their immediate representatives, or by their own ballots, the highest local magistrate in their city, without being subjected to the caprice of party in your legislature. Gentlemen who support the amendment say they are in favor of allowing the mayor to be chosen by the people; will *their* amendment carry out their views? Amend the Constitution as *they* propose, and will the people then have that right? No; but it will then be left to the legislature of the state to determine whether the mayor shall be elected by the people or by the Common Council, or appointed by the legislature, or by the governor and Senate—and to revoke that decision at pleasure.

Gentlemen do indeed assure us that the legislature will never deprive the people of that city of the privilege of electing this officer, unless at their own solicitation. We are asked if we believe any legislature would so deprive them, and we are even told that to entertain such an apprehension, is to arrogate to ourselves all the virtue and the purity of the present and future legislatures. I, sir, arrogate to myself no such extraordinary portion of virtue and purity, and yet I have less confidence in legislative bodies than is necessary to induce my consent to restore to this legislature a power, of which, within my own recollection, it has been solemnly, and for cause, deprived by the Constitution. I will not say that the legislature ever would deprive the people of New York of the right to elect the first magistrate of their city; but I can safely say that legislatures have reluctantly parted with power, and have sometimes upon poor pretexts assumed it. But, sir, the answer to the gentleman's inquiry is furnished by the Con-

stitution. The incorporation of the provision in the Constitution which reserves the appointment of the mayor by the Common Council, shows that the people distrust the purity and virtue of the legislature. It is, I believe, a broad and living principle of democracy, that the tendency of delegated power is always to its own aggrandizement, and that the safety of the rights of the people is secured by their jealousy of encroachment. So much distrust of the legislature as the Constitution expresses, and so much as is founded in the maxims of our government, and no more, I entertain.

What was the evil which called into existence the convention which framed your Constitution? Other grounds of objection there were indeed to your old Constitution, but the crying evil was the corruption and abuses of the council of appointment, subjected to the exercise of a mighty and controlling central power at Albany. What was the great reform made by that convention? Other reforms there were, but that which was the most valuable was the abolition of the council of appointment, and the distribution among different depositories more immediately derived from and subjected to the popular will, and of the appointing power of the state. Will not the people regard this as an attempt to bring back to the central power this portion of the appointing power? Will they not regard it as a precursor of other attempts to restore that state of things which it demanded the convention of 1821 to overthrow? Yes, sir, they will so regard it, and I think I may say for that portion of them which are my constituents, that any proposition tending to increase at the expense of popular rights and privileges, the power of the legislature or executive, will be met and resisted as an encroachment.

For these reasons, I am opposed to that portion of the amendment which provides for subjecting to legislative action the mode of the appointment of the mayor of the city of New York. I am in favor of giving the election to the people, and of extending the same right of election to all the cities in the state, and I shall avail myself of a distinct motion to amend for that purpose.

REMOVAL OF THE DEPOSITS.

JANUARY 10, 1834.

NOTE.—The question was upon the joint resolutions from the Assembly, which were as follows:

"*Resolved*, (if the Senate concur,) That the removal of the public deposits from the Bank of the United States, is a measure of the administration of which we highly approve.

"*Resolved*, (if the Senate concur,) That the senators from this state be directed, and the representatives from this state be requested, to oppose any attempt to restore the deposits to the Bank of the United States.

"*Resolved*, (if the Senate concur,) That we approve of the communication made by the President of the United States to his Cabinet on the eighteenth of September last, and of the reasons given by the Secretary of the Treasury relative to the removal of the deposits.

"*Resolved*, (if the Assembly concur,) That the conduct of the Bank, in attempting, at a time of general prosperity, to produce pecuniary distress and alarm, and in exercising its power with a view to extort a renewal of its charter from the fears of the people, affords of itself full justification for the withdrawal of the confidence of the government.

"*Resolved*, (if the Senate concur,) That the charter of the Bank of the United States ought not to be renewed."

IT needs no soothsayer's aid, Mr. President, to foresee that these resolutions will pass; that they will pass with a majority so great, that I may appear presumptuous in having raised my feeble voice against them. Nevertheless, there is in this legislature, as, according to the genius of our government, there always should be, a minority; and that minority, although small in number, represents, on this occasion, little less than one-half of the people of this state. The universal language of that part of the press which speaks their sentiments, and the inquiries and fears everywhere heard, indicate that the measures which this legislature are called upon to approve, are regarded by that portion of the people of this state with fearful apprehensions, and a painful conviction that, in the adoption of those measures, the Constitution has been violated. I pray the Senate to remember that, although *here* these resolutions have so many supporters, willing to adopt them without debate, neither

boldness of assumption, nor superiority of numbers, is always the test of truth; and that the rivets of despotism will have entered the heart of the country, when such apprehensions and convictions, widely prevalent among the people, shall cease to call forth, in the public councils, a voice in their behalf. I participate in those apprehensions and convictions; and thus participating, should deem myself recreant to my trust, were I to suffer these resolutions to pass in silence. For the minority here, and for all that minority in the state, then, I speak. I wish they had an abler and more eloquent advocate, but I am sure they could not have one more firm or more sincere.

These resolutions are unnecessary. The subject to which they relate is already under discussion in both houses of Congress. A majority of those whom you propose to instruct, will vote as you desire without instruction. A minority will not vote so, although requested, and the numbers of both are determined. Does any senator ask how I know the sentiments of the representatives of this state in Congress? I will answer, and if any member startle at my answer, it will be not because the information is new, but because it is proclaimed here. The majority of the representatives will vote as I have predicted, because of convictions produced by the same mysterious intuition which has so suddenly enlightened this legislature. If they have ever had doubts on this matter, they have all been dispelled by the same agency, which is sufficiently efficacious to carry these resolutions as triumphantly through this Senate, as it carried them through the House of Assembly; where, although the resolutions relate to a subject foreign from the affairs of the state, they were passed by a vote of 118 to 9 in the first week of the session, without argument, and without even the ceremony of printing the documents which the resolutions approve. Be satisfied, then, that the minds of the majority of our representatives in Congress will be as effectually illuminated as your own, and that their reluctant wills will yield to the behest of the same power which decrees your own action. The minority will vote as I have stated, because they will examine and discuss the question, and will arrive at their conclusion, with the aid only of truth and reason. Their wills cannot be subdued by that mysterious power to which I have alluded. I say not too much for them, when I assert they will spurn your insidious request, as much as they would defy your arbitrary instructions.

Sir, I will not say that *these* resolutions have such a purpose, but I may and will say that resolutions of this nature are often, if not always, the machinery of demagogues, who seek by the use of them to accomplish objects which they could not accomplish by the constitutional and proper action of legislative bodies. In such cases, the affectation of a desire to instruct is a veil too thin to conceal the object of the measure. It is in this light such resolutions are regarded abroad by those states whose interests are adverse to the interests of those who adopt them. They excite suspicion, jealousy, and prejudice; and hence other states will endeavor to counteract their effect by adverse resolutions. Such is their natural and inevitable tendency, as it regards our sister states. And what can you expect in Congress as the legitimate effects of such resolutions, even though sincere and for laudable purposes, but blind, vindictive controversy, scarcely veiled by the forms and proprieties of debate? Every state has the same constitutional right, and may as properly exercise the power of instruction. Suppose all to exercise it, where would be the freedom, and what the value of debate? Suppose a part only to exercise it, what would be the security of those who should neglect to avail themselves of it, against partial and corrupt legislation? And for measures in Congress carried by the force of such machinery, what can you expect from those states against whose interests and principles they militate, but combinations, resistance, nullification and secession? It was by passionate, violent resolutions of this kind, that, during the late war, the Eastern states were brought into a posture of disobedience to the general government; and those who are curious enough to examine will find that the states of Georgia and South Carolina commenced by resolutions not unlike these, that career of disorganization which so lately seemed to threaten the immediate dissolution of the Union.

But I will not appeal to the attachment of this House to the Union. The fashion of the day has changed here within the last year, and state pride is now the passion to be called into action! We would have what is called our proper influence in the national government. We would acquire the power in the administration of the government, to which our greater strength and numbers, and our long deference to other states, entitle us. If we win either, sir, it must be by patriotism, not force; by generous bearing, not selfish assumption. Could we win both by inglorious

means, we should obtain but "*a fruitless crown.*" The power thus acquired would be

> "A barren sceptre in our gripe,
> Thence to be wrenched with an unlineal hand,
> No son of ours succeeding."

I shall discuss these resolutions in my own order. The fourth resolution is, "that the Bank of the United States ought not to be renewed." Whatever may be the propriety of acting upon the others, I can discover no necessity for passing this resolution. Two years ago, a similar resolution was adopted by this legislature: but that was accompanied by a preamble stating that the bank had applied to Congress for a renewal of its charter. The preamble, though an insufficient reason for the conclusion that the charter ought not to be renewed, was a colorable pretext for considering the subject. But that reason does not exist now. No such question is before Congress. If it can be required of us to legislate for the advice of Congress, I trust it is enough to legislate upon subjects on which they are called to act. This resolution, then, is confessedly unnecessary for any legitimate purpose. It is unjust to the Bank of the United States, and therefore it is derogatory from the dignity and character of the state. If it be not designed to influence Congress, it must be required for effect at home or abroad. It cannot be for effect abroad. The voice of the state on this subject has been spoken and repeated; this reiteration can only serve to cause both our sincerity and firmness to be questioned. And for what effect at home? I can conceive of none but that the resolution may serve as a party *shibboleth* to members on entering the legislature. Two years since, I advocated here the necessity, in regard to the proper action of the general government, and the commercial interests of the country, of a Bank of the United States. On that subject my opinions have undergone no change, and as the question was then elaborately discussed, I trust I may expect from any member of the legislature who, on that occasion, stood by my side, but has now fallen off, the reasons which have wrought the change in his opinions.

An unscrupulous press denounces all as interested who refuse to join in the crusade against the Bank of the United States. It may therefore be prudent for one so humble as myself to guard against misrepresentation. I have never had any connection with the United States Bank, or with any of its branches. On me it

has bestowed none of its favors. The mammoth, as it is called, is one of those incorporeal existences, which, like one of several heads, (said to reside not distant from this place,*) can be felt, though not seen. I am as far from the influence of the former, as all who hear me will admit I am from that of the latter. My associations have been with those whose interests are connected with state banks. Politically, I have been opposed, as well to the exclusive friends, as to the exclusive opponents of the United States Bank. I deem a national bank necessary. In its present form, I would not vote for a renewal of the charter of the existing bank. With modifications limiting the power to establish branches, and subjecting the capital to the same taxes imposed by states upon local banks, I would vote for the renewal of this bank, rather than create a new institution with the same powers, for the mere purpose of gratifying those desirous for a new distribution of stock. With these views, I shall vote against the fourth resolution, not because I am in favor of renewing the present charter, but because I have no other mode to avoid committing myself against the continuance of any bank with a proper charter.

On the occasion to which I have referred, when I expressed my views at large upon this interesting subject, and in this place, I stood by the side of an honest, fearless, and mighty man in debate.† What small aid I could, I added to that great effort, in which he advocated the constitutionality, and demonstrated the necessity of a Bank of the United States. In that same effort, with that keen vision which in him seemed almost prophetic, he warned the people of this state, of the calamities which would follow the abolition of an institution, the basis of which was laid by the father of our country. His tongue is mute now, his head is low in the earth, and the heart which sent forth that earnest appeal, no longer beats even with wishes for his country's good. Standing in the place he then occupied, carried back by the relation of the subject to that occasion, and oppressed by the reflection that I have assumed the responsibility then so nobly shared, and so greatly discharged by him, I would not unnecessarily venture upon a discussion of this all-important question. The day is coming which will give fearful confirmation of the alarms we then sounded here. The springs of our country's adversity are already sending up their

* The Albany Regency. † The Hon. William H. Maynard.

waters beneath our feet; these streams will increase in number and volume, and will mingle and swell into a tide which human wisdom cannot stay from sweeping over the land. Then, loud and senseless declamation, then, the reckless instigation of popular prejudice and passion will no longer avail. Then, in that fearful day of suffering for past delusion, and of retribution for past abuses of a confiding people, the thousand warnings which have been uttered in vain, may peradventure be remembered. Until then, so far as I am concerned in the councils of the state, let the argument be postponed.

The first resolution is in these words:—

"*Resolved*, That the removal of the deposits from the Bank of the United States, is a measure of the administration of which we highly approve."

When I regard this resolution as one which is designed to have effect abroad, and to remain upon our journals as a part of the record of these interesting proceedings, it seems to me very unhappily expressed. The necessity for being explicit in our instructions to Congress, is quite as obvious as the necessity for giving instructions at all. A journal which, as if by magnetic sympathy, assumes to settle this important question before it has been considered here, and to pronounce the judgment of this Senate before the resolutions have been debated, has called them "*the voice of New York*." Let, then, that voice be as intelligible and unequivocal as it will be trumpet-tongued. Both houses of Congress are engaged in the discussion of this important subject. On one side are employed all the power and eloquence of argument derived from truth, prudence, justice, and national faith; on the other is boasted that more simple and effective machinery which dispenses with the exercise of the reasoning powers, and relieves members from the responsibility of motives, as well as debate. I can imagine something of the scene in the Senate. The Senator from Kentucky [Mr. Clay] concludes a philippic against the President's daring usurpation, imbued with all the impassioned eloquence of Fox. The Senator from New Jersey, [Mr. Southard] in a speech which combines both the argument and invective of Burke, strips the atrocious measure of the pretexts of "the public convenience," and "the promotion of the public interests." The Senator from South Carolina, [Mr. Calhoun] not altogether lost to his country, defends the violated constitution with an argument so full of truth, of patriotism, and overwhelming eloquence, as

almost to redeem him from the censure of unpardonable errors. The administration "which you approve," is left to rely alone upon the intemperate efforts of the gladiatorial Senator from Missouri [Mr. Benton.] What wonder that the numerous auditory of citizens exhibit their sympathy in the triumph of truth, reason, and justice. Sir, the world nowhere else exhibits so glorious a scene. It is like that of a Roman Senate on the eve of being subjected, but not yet ready to own a dictator. Mark, I pray you, the countenance of him who recently assumed the chair, [Mr. Van Buren.] The "wreathing smiles of triumph" so recently boasted, have given place to a gloom upon his brow, expressive of despondency. The solemn silence which precedes the final vote is broken by the annunciation of a messenger from New York. The "empire state" sends, as she has done before, a "missive bearing healing on its wings," to her drooping, "favorite son." Mark the proud flash of his eye while he breaks the seal. "*Resolved*, That the removal of the deposits from the Bank of the United States is a measure of the administration—of which we highly approve." "Please read the resolution again," says the critical Senator from South Carolina, "I do not understand whether the Legislature of New York mean to approve of the removal of the deposits by the administration, or of the administration itself." "Non-committal *again*, Mr. President!" exclaims the ardent Senator from Kentucky. "Long habit of speaking *en double entendre*," says the sarcastic Senator from Massachusetts, [Mr. Webster] "has rendered the Legislature of New York unable to speak without equivocation." The chagrined "favorite son" turns to the worthy senators from this state, and angrily asks, "Have we left no body at home to do our work better than this?" But the trio are relieved by a happy thought from the Senator from Missouri. "Why, it's clear it's only going the whole; the Legislature of New York approve of the removal of the deposits *by* the administration *because* it is an act of the administration of which they approve." Sir, I would spare our state pride such a mortification, but it is no business of mine to mend these matters.

But I cannot plead ignorance. I have learned from an organ to which I have before referred, how this resolution is to be understood *here;* and shall therefore discuss it as intending to approve of the removal of the deposits.

I shall vote against the resolution, because, in my judgment,

the removal of the deposits was an act illegal and unconstitutional. By whom, sir, was this act committed? I answer and aver that it was the act of the President of the United States.* I admit, that in the communication of Mr. Taney, as Secretary of the Treasury, he says the act was done by himself, and that the President, in his annual message, informs Congress that "the Secretary had deemed it expedient to direct the removal of the deposits, and he had concurred in the measure." Against these authorities, from so respectable a source, I regret to be compelled to use the authority of the President himself. But the document from which I shall read is one you are prepared to adopt, and although it clash with that of the Secretary, which you are also prepared to adopt, it must be good evidence. I leave those who adopt both to reconcile their incongruity.

What, then, are the facts? On the 18th day of September, 1833, the deposits were in the Bank of the United States, William J. Duane was Secretary of the Treasury, and Roger B. Taney was Attorney General. On that day the President read in his Cabinet, and the next day gave to the world, the document from which I read as follows:

"From all these considerations, the President thinks that the state banks ought immediately to be employed in the collection and disbursement of the public revenue, and the funds now in the Bank of the United States drawn out with all convenient dispatch."

"The President again repeats, that he begs his Cabinet to consider the proposed measure as his own, in the support of which he shall require no one to make a sacrifice of opinion or principle. Its responsibility has been assumed, after the most mature deliberation and reflection, as necessary to preserve the morals of the people, the freedom of the press, and the purity of the elective franchise, without which all will unite in saying, that the blood and treasure expended by our forefathers in the establishment of our happy system of government, will have been vain and fruitless. Under these convictions, he feels that a measure so important to the American people cannot be commenced too soon; and he therefore names the first day of October next as a period proper for the change of the deposits, or sooner, provided the necessary arrangements with the state banks can be made."

Mr. Duane refused to make the order required by the President for the removal of the deposits, and was removed because he did so refuse. Mr. Taney, who had avowed himself ready to make the order, was instantly appointed Secretary of the Treasury, and did make the order.

After this review of the transaction, who will say that the deposits were not removed by the President of the United States, or that Mr. Taney was more than the mere instrument used to effect the removal? And yet both the Secretary and President

* General Jackson.

gravely inform Congress that he, Mr. Taney, the Secretary, "had deemed it expedient to direct the removal of the deposits, and the President had concurred in the measure." As well might the commissioners appointed by William IV., in his name, to open or prorogue parliament, say they opened, they prorogued parliament, and it was not the king their master. You who are admirers of Andrew Jackson, to whom do you ascribe the glory of the act? You will answer, "It was the President." You who lament his misrule, upon whom do you bestow the censure? You will answer, "the President."

And now let me ask, is it the same Andrew Jackson, who, on the 18th September, 1833, read *this* document in his Cabinet, declaring the act of removing the deposits his own, and on the first Tuesday of December sent *this* document to Congress, declaring that it was the act of the Secretary. Sir, in the one, it was the soldier, the hero, who spoke; in the other, it was the politician.

And now, having established that the measure was the proper act of the President, let us next inquire, what right had the President to remove the deposits? They are the funds, the treasures of the government. They were in the Bank of the United States by virtue of law.

Is the President the Secretary of the Treasury? No; but it is claimed by the President that he has absolute control of the treasury department. To me this assertion seems so bold, so reckless, so fearful in its consequences, that I must be indulged with an opportunity to examine it. It rests upon the unsupported assumption that the treasury is an executive department. But the act of Congress, by which it was established, repudiates the assumption. All the other departments are, in the respective acts by which they are established, declared to be *executive* departments. That of the treasury is, on the other hand, called a *department*. But I go further, and maintain that from the very nature of the Constitution it cannot be an executive department. Its duties are, to collect, preserve, and disburse the revenues. Those revenues are, exclusive of the executive, under the management, care, and keeping of the representatives of the people, the legislature. From the impracticability of the managing, guarding, and disbursing those moneys by Congress, it results that there must be a delegation of a portion of those duties; that delegation might be

made to a committee of their own body, or to an agent responsible to them, and subject to their supervision. Congress could not delegate, and therefore are not to be presumed to have delegated that power to the executive. Such a law would be unconstitutional and void. The act of Congress did delegate to the secretary a discretion properly their own, to remove these deposits. That discretion Congress intended *he* should exercise, when the deposits should be removed by him. It was *his* discretion, then, that should have been exercised, not the discretion of the President. Yet for the conscientious exercise of that discretion he was removed by the President, and the deposits were withdrawn from the bank, contrary to the judgment he gave in exercising that discretion. If it be true, then, that the President has assumed and exercised that discretion which Congress has reposed in the secretary, and could not constitutionally confer on the President, it irresistibly follows that the President has usurped the discretion and duties of the secretary. And it is precisely because it was such an usurpation, that the Secretary and President equivocate concerning their respective action on the subject, when they come before Congress. *Now* it is not the President who has removed the deposits, nor was it done upon his responsibility, but it is the secretary, Mr. Taney, and it was done upon his responsibility. It cannot be that such an evasion can avail. He that, as a legislator, will say that Mr. Taney, and not the President, removed these deposits, could, as a judge, say that a will was executed by a living testator, although one devisee supported his lifeless corse while another guided the hand which wrote the testament.

And how, sir, let me next inquire, is this usurpation excused or justified? Solely by the conceded power of the President to remove and appoint the Secretary of the Treasury, and his general duty to see that the laws are faithfully executed. Grant this a sufficient justification, and what follows? The President has unlimited command over the treasury. Upon the Secretary of the Treasury, and, therefore, according to the principle assumed, upon the President it is devolved to collect, preserve, and disburse the entire revenues. The Secretary at War, it is conceded on all hands, is an executive officer, and equally subordinate. It requires but little imagination to suppose what might have been done, (and if the position assumed by the President be true, lawfully done,) at another Cabinet council. "Rally the army," the Presi-

dent might say to the Secretary of War, "that I may put myself at their head." The secretary refuses. "Colonel Benton, my gallant friend, will you issue the order?" "Ay, I will do anything 'to serve under such a chief.'" "Sir, you are Secretary of War." The army is rallied. "An order for ten millions, on my responsibility, not on your oath," (says the President to the Secretary of the Treasury.) The conscientious secretary refuses. "Mr. Taney, you are Secretary of the Treasury," replies the President, and the order is instantly given. Such are the powers of the President of the United States, as assumed in these documents. And now, when Congress shall have conceded the power claimed, will gentlemen tell me where on the face of this earth is despotism to be found, if it be not here? Louis Philippe owed his elevation to the throne of France to his declaration to the citizens of Paris through General Lafayette, that he believed the Constitution of the United States the best that had ever been conceived. Sir, if this is that Constitution, it is more despotic than the prerogatives for which Louis XVI. suffered on the guillotine.

The usurpation of the secretary's powers is not the most alarming feature in this unprecedented transaction. It is the defiance of the supervisory power of Congress uttered by the President of the United States. Yes, sir, in this very document, under the President's own hand, we are told that the power of the secretary over these deposits is unqualified, and as the secretary is in all things responsible to the executive, it follows that the power of the President over them is also unqualified.

It is true the President, with the meekness of Cæsar, when he thrice refused the crown upon the Lupercal, regrets and is surprised to find his duties so great. But he does not shrink from the responsibility devolved upon him. Sir, have we lost sight of our Constitution? Or, in truth, have we none? Congress have sole and sovereign control over these deposits, the revenues of the nation. One year ago, this administration, "which you approve," thought so. Witness the communication of Mr. McLane to Congress, informing them that he had instituted an inquiry into the safety of the deposits, and recommending the subject to their consideration. That investigation was had, both in Congress and by the agent, and upon consideration and debate, the House of Representatives instructed the secretary not to remove the de-

posits. Thus baffled in procuring from Congress the desired order for the removal, the President caused them to be removed upon his own responsibility, and says that although he submitted the matter to Congress, it was not to ask their action, but to procure that very advice which he defies.

So insulting a defiance, so bold an assumption of legislative power, might possibly be excused by urgent motives or by stern necessity. Sir, what are the motives alleged, and what was the necessity for this precipitant and violent departure from the constitutional limits of the executive prerogative? Was it to save the public money in danger of being wasted? No; that is not alleged. But to save the country from "the commercial distress which must ensue," if the deposits should be suffered to remain where by law they were required to be deposited until the expiration of the charter of the bank, "and to save the people from the corruption of the bank." These exigencies existed with equal force when the House of Representatives resolved, six months before, that the deposits ought to remain in the bank. Congress was to meet within sixty days after the time appointed for the removal, and if they had strangely overlooked these exigencies, there would then have been ample time to apply the remedy. There was then no extreme necessity for the interposition of the President.

And now I pray senators to consider what it is they are called upon to do? It is to instruct, not our representatives, but the representatives of the people of this state, to ratify and confirm this usurpation, and surrender to one man not only the treasures of this nation, but their own powers and duties with our own. If you will send these instructions, send one more with them. Tell them to forswear the memory of their fathers, their country and their God. You will then have left them no more of evil to commit, no more shame to incur. And who are we, sir, to give these instructions? Ourselves the representatives of that same betrayed people. Sir, I have confessed that I had no hope that any thing I could say would change a single vote in this house. Yet, when my fears are all excited by a view of the ruinous and lasting consequences of this usurpation, and when I reflect on the precipitancy which marks this act, I could kneel before this Senate and implore them, could conjure them by our common

hopes, our common interests, and our common recollections, to pause before the reckless measure be accomplished.

The third resolution is in these words:

"*Resolved*, (if the Senate concur,) That we approve of the communication made by the President of the United States to his Cabinet on the eighteenth of September last, and of the reasons given by the Secretary of the Treasury relative to the removal of the deposits."

Sir, to what limit of legislative self-abandonment is it proposed to us to go? Last year, in a debate upon the proceedings of the convention in South Carolina, another senator* and myself protested against adopting, in gross, an argumentative report, although made by a committee of this house. We had the success then, (unusual success for that senator and myself on such occasions,) to prevail upon the Senate to limit their approval to the general views and conclusions of a contradictory and unmeaning report. And what have we now before us? We are called upon to adopt and approve an official document, not of this house, nor even pertaining to this state, merely because it bears the President's name: although, when solemnly called upon by the Senate of the United States, he has refused to acknowledge it; a document for the authenticity of which we have only the imprint of a partisan newspaper; a document contradicted, too, by the other paper with which it is associated in the resolution, and by the annual message of the President to Congress. Sir, we do not pass a bill for a turnpike road, though it be introduced by a member of the house, until it is twice read, referred to a committee, reported upon by them, submitted to a committee of the whole house, and again solemnly read. And yet this document has never been, and in this house never will be, once read; it has been referred to no committee, and we are indebted, we are told, to courtesy to the minority for its being printed one day before we are required to discuss it. Sir, you will search in vain through your voluminous journals for a precedent for such legislation as this. And if you go back to the history of that country from which we derive our forms of legislative proceeding, you will look in vain for a parallel, until you reach the history of that pliant parliament which successively tendered its approval and ratification of the successive marriages and divorces of Henry VIII. Sir, there is no name in this nation which could exact so humiliating a sacrifice of legis-

* The Hon. Albert H. Tracy.

lative dignity as this, but the name of Andrew Jackson. And now, "in the name of all the gods at once," who is this Andrew Jackson that we "must bend our knees if he but look on us"—nay, that we must thus propitiate the condescension of a look—that, "when he bids" us, aye, *unbidden*, we must "*mark him, and write his speeches in our books?*" Is he greater than the father of our country? And yet, in all the enthusiasm of national gratitude for independence bestowed upon us, was never so humiliating a sacrifice offered to WASHINGTON? He, sir, would have spurned the legislature of a free state that would have laid such a resolution at his feet. * * * * *

Sir, it is settled, whether wisely or unwisely, that the circulating medium of the country must be a paper currency. The condition of that currency concerns every man's weal in the land. When it is unsound, it produces those hard times which we have often only imagined, but are now experiencing. When it is sound, it produces those good times, the enjoyment of which makes us forgetful of the cause which produced them. That currency, when healthful, raises the value of your bank stock; it adds to the value, not only of the annual products of your farms, but of the farms themselves. Upon its condition it may depend whether your merchandise, judiciously prosecuted, shall be profitable or unprofitable, and whether your manufacturing or mechanical operations shall yield a reward for your industry; whether you be able to collect your credits, or pay your debts. That currency has, until recently, been a long time sound and uniform, and the world has never witnessed a scene of greater prosperity than has been exhibited in this country. That currency has, at one period of our history, been diseased, and then it brought on a train of evils for which legislative wisdom in vain tried the efficacy of relief laws; a state of suffering from which there was no escape but the return by the road of penance to a national bank, to produce a healthful and uniform state of the currency. So, sir, it will be now, with the only difference, that the aggravation of our distress will be proportioned to our recent unprecedented prosperity. That currency, sir, obeys no administration; the laws of its action are absolute and certain. It has none of the subserviency of secretaries, of political congresses, or of partisan legislatures. It owes no allegiance to him whom men call King Caucus; it is governed by no usages or customs of "*the party*." It defies the thunders of govern-

ment newspapers, those ministerial vaticans whose anathemas infer political death. It despises "*the voice of New York*," and is reckless even of "*the voice of the People*." This mysterious and arrogant power can be subjected by one agent, if he be strong, wise, prudent, faithful and persevering. That agent is he who, with the requisite amount of funds and credit at his command, in all the different parts of this extended country, and with specie always in its vaults, will diligently watch the motions of the currency, and with untiring industry, faithfully, and at all times, either free of charge, or at nominal expense, transfer funds redundant in one part of the Union, to supply deficiencies elsewhere. To accomplish this purpose, the agent must have, not the favor of the executive, nor yet the ear of the ministry, before or behind the throne, nor will even popular acclamation answer his need; he must have the confidence of men of capital and enterprise in this and in foreign countries. His bonds or notes must be esteemed as secure as his vaults. Such an agent, we have had; it was the Bank of the United States. The funds it had were its capital and the deposits of the government. Its bond brought specie at its need from every part of the globe, and its notes in every section of this country were more valued than the precious metals. Sir, that agent you have dismissed; you have substituted thirty or forty of feebler and distracted power in its place. These act without concert, without responsibility, and without credit. The evil was almost instantaneously felt; you denied it at first, then confessed it, then promised it would abate; and still it goes on increasing, and will go on increasing, until your industry is paralyzed, and your commerce arrested in all your market towns on the seaboard. The reproof of your error now reaches you from every commercial city in the land. You know it will come louder and bolder, and ere you have closed your duties here, it will visit the homes of your constituents. Yes, you will return to them to witness the depreciation of farms and merchandise, and the general gloom which mutual distrust and individual apprehension can so effectually produce. Your banks having extended their discounts to their utmost limits, will close their vaults, and the application for renewals and additional loans will be answered by the visits of the sheriff to the houses of the debtors. The usurer will be abroad in the country, as he is now in your cities. You have disturbed and deranged that subtle currency, and its vibrations will shake

and unsettle all business transactions. You know it: you anticipate the complaints and the rebuke of your constituents; and you seek to deceive yourselves; and then, self-convinced, you honestly deceive them by laying the evil at the door of the United States Bank, which, during all this pressure, has been, with all the power you have left it, discounting freely to relieve the people. You may for a while deceive them and yourselves; but in the extreme of suffering, they will awake to the conviction that these evils come from the reckless sacrifice of their prospects, hopes and enjoyments in a political warfare in which they had nothing to gain, and the calamities of which were sure to fall upon themselves. *Then* you will have to give better reasons for your votes on these resolutions than were given in the House of Assembly, or than have *yet* been given in this house.

Having now, Mr. President, stated generally the grounds of my opposition to the passage of these several resolutions, it remains, of the plan I had marked out for myself in this debate, to consider briefly the reasons assigned by the President and Secretary for the removal of the deposits. I have necessarily anticipated some of them, but will carefully avoid repetition.

We are informed by the President and Secretary, that the removal of the deposits was directed because it was required "by the public convenience, and would promote the public interest." And what is assigned as the inconvenience to be remedied? It is alleged that the deposits would have been unsafe, had they been suffered to remain in the Bank of the United States. Grant me patience if I cannot suppress my astonishment at this assertion. A bank with 35,000,000 of capital actually paid in, and still remaining there unwasted, prohibited from loaning a dollar of that capital or of the deposits, a less safe place for deposits than the same bank when engaged in promiscuous and widely-extended loans, to the amount of double its capital! If there is a merchant in my hearing, let him come and learn financial wisdom from this document! When you have amassed millions by the hazards of trade, and your capital and all the funds your credit can command are afloat upon the seas, beware how you withdraw that capital and call in your debts! The career of prosperity is safe if you continue your hazards, but bankruptcy and ruin will stare you in the face when prudence shall dictate to cease acquisition, and to invest your capital and gains!

And now, sir, let us look at this act in all its magnitude. The President has thrust out of office the agent appointed by Congress, because, in his discretion, he conscientiously refused to remove the deposits. He has put into his place a man who avows that he acts, not as the agent of Congress, but of the President. He has withdrawn the revenues from the bank, and has placed them in depositories unknown to the law. He has disturbed the currency, and thus prematurely brought distress and suffering upon the nation, in the moment of its highest prosperity; and all because the President could not wait sixty days out of four years for the action of Congress.

Sir, it may be true, as has been said here, that this legislature will approve of these after-thought reasons of the President and his *de bene esse* Secretary; for, for aught I know, this legislature may, as the act of approval would indicate, repose more confidence in one man, than in some two hundred and fifty representatives of the people. Such opinions are not new, but they have been always less popular on this side of the Atlantic than on the other, and are less popular there than heretofore. I must be excused from becoming a convert to this monarchical creed, until Congress adopt and approve these documents. When that shall be done, I will agree with the majority of this House, that legislative bodies are an undue hindrance upon executive action. On the first attempt to reassume their constitutional prerogative, the President will enter their halls, like Cromwell, and say, "I command you to begone about your business, for the Lord hath no further need of your services."

But, sir, there are considerations appertaining to this subject, and arising from the peculiar opinions of those whom I address, which ought not to be forgotten here. The President has pronounced judgment against the bank, and this legislature has constituted itself a court to review that judgment. Let us then proceed in the investigation of the matter, with the aid of those forms of judicial proceeding so conducive to the attainment of correctness, certainty, and justice. Who is the defendant? The Bank of the United States. I will, sir, at the hazard of being denounced as a "feed advocate" of the bank, *pro hac vice*, offer myself as counsel, and notwithstanding what I have before said as to the impropriety of these resolutions, because they do not come within the scope of your duties, will nevertheless waive all plea to the

jurisdiction of the court. The defendant is a bank, the offence charged is, that this bank has sought to obtain power. Sir, on such a charge the President can have no hope here. My client, the bank, is sure to escape. Why, sir, it is the adjudicated law of this court that banks ought to possess political power. Your statute books, from year to year, down to this day, are full of recorded adjudications, that banks are the safest and most proper depositories of political power. We have, in this state, a system admirably contrived and adapted to increase the number and combine the energies of these purifying political agents. We take care, when a bank is to be incorporated, that the commissioners named to distribute the stock shall be men who will so distribute it as to secure a political organization of the institution. Nay, so far from discouraging these agents, we demand no bonus, but on the other hand we give a bonus of ten per cent. upon the capital stock of every bank, as a compensation for political services. From such a court as this, then, I know that my client, the Bank of the United States, can have nothing to apprehend. I applaud, if your honors will permit, your wisdom in having thus settled the law. I know your impartiality and consistency, and I crave your honors' pardon for having dwelt so long on the other charges against my unfortunate client. Had I but pressed this point first, I know you would have acquitted the accused at once.

But to examine briefly these charges against the bank. The first is, that preparatory to its application for a renewal of its charter, at the last session of Congress, the bank increased its loans twenty-eight millions of dollars, to induce public favor. Unfortunately it appears there is a mistake of eleven millions in this aggregate. The amount of increase was seventeen millions only; and it appears from the report of the directors of the bank, that the reason for making this increase of discounts, was an increase of available funds, to the amount of eleven millions.

Another charge against the bank is, the expenditure of moneys in the publication of documents, speeches, and reports, in vindication of itself against the relentless war waged upon it. Sir, we all recollect the virulence, the recklessness of the attack. We know that it was make by the executive of the United States, aided by all the power and influence of the government. I shall not stop here to count the number of copies of Gallatin's irrefragable essay on banking, and of the National Intelligencer, and of

Mr. Webster's and Mr. McDuffie's speeches, which were published and circulated by the bank. I know well that the number in the region of country in which I reside, fell as far short of the cloud of vetoes, and Benton's speeches, and extra Globes, as these latter did of the former in sound practical knowledge, forcible argument, and ingenuous patriotism. Sir, it is certainly an anomaly in this government, where we boast the freedom and independence of the press, and "the safety with which error of opinion may be tolerated where reason is left free to combat it," that it should be made a cause of complaint against the Bank of the United States, that it defended itself by means of the press against the attack made with a design to destroy it. But, sir, who is he that thus interposes between the people and the press! I remember well, and the Senate will pardon me if I call their recollection to a period so remote, that during the canvass which preceded the first election of the present President, the great complaint against his predecessor was, that he had used the patronage of the government to operate upon the elections. I remember, too, that when the President took the chair, "*reform*" in this particular was one of the most prominent parts of that thorough reform which he saw so "conspicuously inscribed on the list of executive duties." Can it be that it is the same individual who assigns, as a justification for his violent usurpation of the power of Congress, that the bank had employed the press to inform the people upon a question which he boasts was submitted to them at his re-election!

Sir, I have differed from the majority of this Senate and this Legislature, as to the propriety of making banks the depositories of political power, and for that reason I rejoice that the Bank of the United States had the moral firmness to resist the efforts made to subject it to political control. Further than this, and further than defending itself when assailed by the administration, it has never gone. Had it gone further, I should have rejoiced that its political influence had been exercised *against* executive power and influence. As counteracting agents, they may, in some degree, neutralize each other; but united, the power and influence of both would be fearful indeed. You are now co-operating to produce that union. You will dismiss the Bank of the United States, which is independent, and you will expose the deposits at public auction, to be taken by those state institutions which will bid most of political support to the executive. When this shall have been

accomplished, there will be real cause for the alarm now affected. Sir, I believe that the days of the bank are numbered. It is for the welfare of the country, and not on account of that institution that I regret it. That institution has sustained the government, and enabled it to pay its immense debt; it has given us a sound currency and brought foreign capital to be tributary to our use; thus enabling us to increase our own, and to develop our resources a hundred fold. Its benefits are seen everywhere over this widely-extended country. That institution is now to be made a sacrifice, I would fain hope the last sacrifice, to party spirit. The experiment is to be made, whether this sacrifice is wise and expedient. If I see cause to despair in the condition of depression and distress to which this nation is to be reduced, I still can look upon it without an entire sinking of the heart, for I here and elsewhere have discharged the duty devolved upon me, as a freeman, and the representative of freemen. There still remains a painful hope, that in the midst of suffering the nation will rouse from its delusion. In the depth of distress will come the teachings of prudence, and the purification of patriotism. Then will come the mighty energies which will work out the redemption of our country; for she is yet too young, too vigorous, to sink into a dishonored grave. Then will come, too, the hour of mutual congratulations that all had awaked from their error, before it was too late, and then looking back with humility and gratitude upon the abyss from which we shall have escaped, we shall return again to the counsels of our fathers, and be content for the future to be guided by their precepts, and to imitate their example.

[In reply to Mr. Dodge.]

My honorable friend from the IVth, [Mr. Dodge] has reviewed our long and agreeable acquaintance as members of this body, and frankly expressed his opinion of the manner in which I have discharged my duties here. He has been pleased to add, that while he has seen much in my conduct to admire and respect, there have been two incidents which, in all the frankness of an honest nature, he says he has been compelled to disapprove.

The first of these offences is, that two years ago, in a debate similar to this, I defended the principles of anti-masonry in this house. Now, sir, with all my solicitude to secure the unreserved esteem of my honorable friend, the act of which he complains is precisely that one for which, of all others, I cannot admit his cen-

sure to be just. Sir, my honorable friend will recollect that I was then, as I am now, an anti-mason. I was sent here by anti-masons. I am not, as the gentleman well knows, the man to profess principles in one place I am afraid or ashamed to avow in another. I am not the man, when sent here because I am known to entertain political principles approved by my constituents, to abandon those principles for any which shall be more popular in this place. Under such circumstances, when "the blessed spirit" of anti-masonry was traduced in the Senate, I could not sit by in silence. Nor should I now; and however I should regret the loss of my friend's favorable opinion, I should commit the same offence, were an attack upon those principles made by my honorable friend, or any other member of this house, whose assault should be made with sufficient dignity and self-respect to justify me in replying to him.

But it was less the act of defending anti-masonry, than the manner of the act, that my honorable friend condemned. He says, that on the occasion alluded to, I *profanely* declared I wished to leave anti-masonry as a legacy to my children. And this profanity shocked the pure and pious feelings of my honorable friend. Sir, were the report which he gives of my speech on that occasion correct, I know not that I should have any desire to change it. Secret societies, composed of members bound together by unlawful oaths, and extended over the whole land, are opposed to the genius of our government, subversive of the laws, and inconsistent with private rights and the public welfare. Having assumed, and still intending to maintain, the responsibility of opposing such institutions during the period of my action as a citizen, both morally and politically, as long as moral or political action shall be necessary and shall promise to avail, I should feel that I ought to inculcate upon those the gentleman has referred to, among other lessons, the same duty, if occasion shall remain, when they come upon the stage of public action. I would not swear them, as Hannibal did his son; but I would leave my injunction upon them to contribute all that might lie in their power to eradicate so great an evil from the land. But what on that occasion I did say was, in speaking of the names enrolled in the cause of anti-masonry, that there were among them some which had acquired a fame for talents, purity, and public service, which any member of this Senate might be proud to leave to his children; for myself,

I wished to leave to mine no better legacy. And is it not so? Are there not such names?

Sir, with this explanation, which would have been unnecessary had the gentleman consulted his own memory rather than a certain organ of doubtful veracity, which has furnished too many of the facts relied upon in his speech, my honorable friend will, I trust, no longer have occasion to complain of my *profanity*. But the gentleman inquires whether I am not satisfied that this legacy has lapsed. I can console myself that if it be so, it has probably gone into the same oblivion with his ancient federalism and freemasonry.

But my honorable friend is distressed by an apprehension that I have acquired the principles expressed by me in this debate not among "the green mountains and valleys of my native county," nor yet among the beautiful plains and lakes of my adopted residence, but among certain "*aristocratical associations in Europe.*"* Sir, I confess that my principles relating to this subject, however derived, are diametrically opposed to those proclaimed here by the gentleman from the IVth. It is *my* principle that it is the business of the legislature to confine themselves within the sphere of duties prescribed by the Constitution. It is *his* that the legislature may safely transcend that sphere to assume the duties and responsibilities of Congress. It is *my* principle that it is the duty of the legislature to resist usurpation of legislative powers by the executive. It is *his* that it is safer to trust to executive discretion than to legislative wisdom. It is *mine* that the governing and sole motive in all legislation ought to be the security of the government and the good of the people. It is *his* that the powers of government ought to be so wielded as to subserve the ambition of him who happens to be the favorite of the predominant party of the day. Sir, these principles were not acquired, although they may have been confirmed by my observations or associations in foreign countries. If my honorable friend had taken occasion to inform himself of my progress from more authentic sources than the questionable organ before alluded to, he would have found that, during a recent and rapid journey abroad, undertaken from motives which need not here be mentioned however much they may have been misunderstood, I kept

* Mr. S. had recently returned from a visit to Europe. See Letters from Europe, Vol. III.—Ed.

as far aloof from courts and the great who dispense favor abroad, as I do from the administration and those who dispense power and political preferment at home. *I* kissed no queen's hand. *I* bowed to no court favorites there, more than I have fashioned my principles to the standard established here. If I have learned anything by foreign travel, it has been from the universal subjection, suffering and despair, which I witnessed in Ireland, to sympathize with the agitators of that country, and know the fate which awaits a people who surrender their legislature, the only safeguard against executive oppression: from the general acquiescence in the exclusive privileges and immunities of the great, which I witnessed in England, to learn the importance of resisting every measure calculated to increase the overwhelming power and influence of those who are charged with the duties of government: from the Prussian and Austrian armies which I met in what were called the free cities and states of Germany, the folly and madness of those nations which, under the pretext of public convenience and public interest, place in the same hand the purse and the sword: from the boldness, intelligence, and patriotism of the republicans of Switzerland, the value of that democracy which spends itself, not in lauding the servants of the people, but in watching their conduct with a jealous and wakeful eye. And from my intercourse with him who dwells in the shades of La Grange, the value of a consistent and enduring devotion to the principles of republicanism, not only when the people hail the champion of those principles as their deliverer, but even when they desert him in his solitude to gaze upon and be satisfied with the insignia of their deliverance, while the popular constitution is undermined, and the popular executive usurps the same despotic power over the press which had sent his ministers to prison, and his predecessor into banishment. Sir, although then, I have been exposed to the seductive influences of foreign manners and opinions, while my honorable friend was more safely relaxing himself amid the democratic associations of Montgomery county, he may rest assured that I have returned to love my country better, and to understand better the value of her institutions; and as far as the responsibility rests on me, to take care that the welfare of my countrymen be not sacrificed in the conflict of contending parties, and that the Constitution be transmitted unimpaired to posterity. But enough, sir, upon a topic which nothing but allusions, ungenerous and unfounded, could justify me in introducing here.

THE SIX MILLION LOAN.*

APRIL 10, 1834.

Mr. President: What our eyes have seen, our ears have heard, and our hearts have felt without these walls, is now brought home to us in this place. The title of this bill proclaims that an alarming crisis has occurred in our commercial condition, and that a mighty effort is necessary to rescue the people of this state from imminent unbearable suffering. I would, above every other offence, avoid that of bringing to this debate a contentious, an interested, or self-confident spirit, and would, on the other hand, invoke the spirit of mutual conciliation, that we may reason together upon the causes, nature, and extent of the calamities experienced and apprehended, and search out and apply a proper and adequate remedy.

The proposition to which I shall first call the attention of the Senate, is, that the message of the governor, and the report of the committee, are erroneous and unsatisfactory in regard to the nature and extent of the evils existing in the country. Those documents assert the existence of "*a state of commercial embarrassment*," "*a pressure*," "*a shock to business*." But neither of them assumes that the evils now existing are so great as to require *immediate* relief. The bill which they recommend is intended to provide for more serious evils expected to occur during the recess of the legislature, and to be produced by some hostile action of the United States Bank. While I see no cause to apprehend any danger from the future action of that institution, I maintain that the pressure under which the people of this state are now suffering, is one altogether unnecessary, and demands immediate relief.

Sir, there may have been prudence hitherto in keeping silence

* Speech in the Senate of New York, on the bill to loan six millions of dollars on the credit of the state.

concerning the *pressure*. But that time has gone by. The legislature which would shut out the evidences of suffering it proposes to relieve, would be as unpardonable as the physician who would prescribe a remedy for a fever, without consulting the symptoms which indicated the character and malignity of the disease. It is now the part of neither wise nor honest men to deny the pressure in its full aggravation.

About three months have elapsed since it was first experienced in New York. The first indication was one of a character that seldom misleads—stocks of all kinds fell 5, 10, 15, 20, 25, 30, and in some instances almost 50 per cent. Foreign and domestic commerce have been, and still continue, greatly obstructed—bills on foreign countries return dishonored—stocks depreciated, no longer serve as remittances—accustomed accommodations are withheld—receivables are protested—merchandise has fallen in value—jobbers, retailers, purchasers of cotton, wool, tobacco, wheat, and other produce, have in a great degree suspended their purchases. More than a hundred merchants, several bankers, many manufacturers, have yielded, and those who have not done so, cautiously avoid making new engagements. The consequences have been, a depreciation of property of every kind, and the interruption of business everywhere. Although the pressure fell first upon the merchants, it has since visited every class of citizens—the mechanics, the manufacturers, the seamen, the carmen, the laborers at the wharves and in the streets. Operatives are dismissed from employment, and consequently labor becomes redundant, and wages decrease. Sir, we have seen in that city a new spectacle, one which neither you nor I have ever seen before, and which I trust in God we may never see again. We have seen all these classes of citizens assembling in tumultuous meetings, complaining of the derangement of business, and sending committees to Congress and the President, to implore relief. But it is said these meetings have been partisan and factious. I ask, are those the classes of men ordinarily liable to factious excitement? When was it before, that in the midst of profitable employment, they simultaneously left their labors to congregate in the Park, the Exchange, and the streets, and to set up a factious clamor of pressure and distress, which was sure to produce the evils of which they falsely complained? Sir, I have seen in certain newspapers, charges that individuals have dismissed laborers

for opinion's sake. Without inquiring which political party has exceeded the other in this mode of political action, or with what grace the charge comes from those who proscribe from all public office for independence of opinion, I will, for this question only, admit the charge to be true, and then I ask, when before did it happen in this country, that the employer could dictate conditions to the laborer, and above all, conditions of political action?

Like those living remote, who hear of the plague which desolates the city, but think that it cannot reach them, because they cannot see it on its march, we, for a time, thought this pressure could not extend into the country. But there are now seen and heard the indications that it has already become universal. The financial departments of the general government, and that of this state, are equally affected. The general government, instead of a revenue of twenty millions, is now reckoning on one of not more than half that sum. In this state we have of funds belonging to the treasury, more than two and a half millions, accumulated for the purpose of paying the debts of the state, and lying in deposit in banks. Our stocks were never so cheap. By buying them, we not only could avoid all possible risk of loss or waste of these moneys, and stop the increase of interest, but we should also make a saving of more than one hundred thousand dollars. Why do we not buy them? The banks require the money, and we leave it there to sustain them. Instead of calling on them to pay the two and a half millions they now owe us, we are about to borrow, at a loss to the state, six millions more, four of which are to be loaned to the same institutions. We are loaning four millions to banks which already owe the state an amount greater than that of all the specie in their vaults. The stock of the Delaware and Hudson Canal Company, which owes us $750,000, is reduced to 17 per cent. below par. The season for the opening of the canal is at hand; no one reckons on a revenue from it to exceed two-thirds of that of the last year. The construction of the Chenango Canal will require, during the present and the next year, the expenditure of the million of dollars appropriated. But the canal board have forced the entire stock into the market, at a great and inevitable loss, to obtain $900,000 to deposit and sustain the banks, instead of issuing portions of it from time to time, as the gradual progress of expenditure may require.

The entire system of improvements by incorporated companies has been affected. The Mohawk and Hudson Railroad Company

have recently contracted a loan, at the unusual rate of six per cent. interest, with the privilege to the lender, to convert the loan into stock, at par, within two years. The stock of the Saratoga Railroad Company has fallen 15 per cent. That of the Utica and Schenectady has fallen in proportion, and were any considerable instalment to be called for, it would sink below par. A competition existed for railroad charters, at the commencement of the session. No one now believes that the stock of a single company will be subscribed.

Individual property and enterprise have been no less affected. Banks having ceased to discount, their profits are now reduced, and their stock depreciated. Manufactories are everywhere struggling to sustain themselves, by contracting their operations. Most of the great western mills have been stopped. From all that I have learned, I have no reason to doubt that the depreciation of real estate, throughout the state, is 33 per cent. Produce stands at the same nominal price, in Orange county and on the Genesee river. And yet, the pressure is only at its first stage in the country. As surely as there is a scarcity of money, so surely property and the value of labor must depreciate, and business must be arrested. The paper of the country merchants is falling due, and is, as I am informed, accumulating in unusual masses, under protest, in the country banks. Much of the merchandise purchased last fall, is unsold. For what has been sold, the merchants do not yet expect payment. They rely, as they always have relied, upon the banks for accommodations—and those accommodations are denied. Sir, I am told that, if the banks continue closed, the merchants in the country will be unable to pay more than one-third of the paper falling due this spring. The consequence must be, that business will be still more generally obstructed, and a fearful addition will be made to the list of bankruptcies. Let no man say that the sufferers are merchants and speculators, incurring only the common hazards of their profession. If the suffering were confined to them, I would nevertheless repudiate the maxim, that they are not entitled to relief. Sir, our farmers and our mechanics employ borrowed capital, they contract debts—and there are few of either class who can sustain themselves during a season of depreciation of farms, produce, and labor. As surely as commerce sustains and invigorates every department of business, so certainly will its stagnation produce that general depreciation. Those who grow rich

on the spoils of the merchants, will swell their gains from the distress of the farmers.

I shall be told that the pressure is relaxing. The indications to that effect are a proof, indeed, that business is adjusting itself to the pressure. Those who have already failed, need no more money. Those who can avoid failing, want much less for new engagements. But, if it be only *thus* that the pressure is to be relieved, and even supposing that no new obstacle interpose, then the return of prosperity will be so slow, that the country must yet undergo more severe suffering than it has yet experienced.

Sir, the picture I have drawn is in gloomy contrast with that presented by his Excellency, and the joint committee. If it be thought too deeply colored, I may be suffered to say that they and I have both spoken before.

The governor, in his annual message, and the committee, in their action on the resolutions concurring in the removal of the deposits, plainly declared that they had no apprehensions of the pressure they now admit. I then predicted what is now realized. It is not for me to assign the reasons why his Excellency considers the present pecuniary embarrassments of the country so trivial. There is a trite opinion that rulers seldom sympathize with the people. Certain it is that, in the present instance, the executive chamber, in this capitol, is as inaccessible to the voice of complaint as the executive palace at Washington. But I confess I am surprised that this pressure is so lightly regarded by the joint committee, when I recollect that among its members are two distinguished gentlemen representing the city of New York, whose interests have been so vitally affected. The fact may serve to show how much a temporary removal from our constituents tends to weaken the influence of our relations toward them.

Sir, if the view I have taken of the pressure existing is at all correct, it follows that if relief is to be afforded, that relief ought to be *certain and immediate*, not remote and contingent, as is that proposed by the bill under consideration.

Let us now consider the question—What was the cause of the destruction of confidence? During the year 1833, the country was in a most palmy state of prosperity. The tendency of such a state of commercial business as then existed, is to a condition of more active and extended enterprise. We have experience now to prove that there was no obstacle, like that of over-trading, to

prevent the continuance of commercial enterprise. The rate of exchange was never so decidedly in our favor. As the country was never so little indebted abroad, so had there never been a greater abundance of capital at home. To carry on the system of commerce, those engaged in it required the same amount of capital they had before enjoyed. It is admitted also, that there was required the additional amount of about twelve millions necessary by reason of the modification of the tariff laws. It is admitted by the governor and the committee, that if this capital could have been procured by the merchants, there would have been no obstacle to the successful prosecution of commerce. The capital was to be obtained from the Bank of the United States and the state banks. It will not be denied that, as late as September, the banks were perfectly able to make the accommodation. The country never was more able to give the necessary security. The additional twelve millions were required as a mere temporary accommodation, as the duties for the payment of which it was needed would, in due course of business, have been refunded to the merchants by the consumers. It is admitted on all hands, that, had the banks made the discounts, no pressure would have been experienced. But the banks *did not* make the discounts. Hence came the scarcity of money, the consequent failure to perform engagements, and the depreciation of property. Mutual distrust was a necessary consequence—this distrust extended, and at length affected the currency. The effect was inevitable—the currency was forced into the banks; these institutions feared to re-issue it; money became more scarce; distress, of course, increased. The currency has been continually flowing in upon the banks, and the same operations continuing in the same circle, have continually increased the pressure. This I suppose to be the *manner* in which confidence has been destroyed. It is evident that the question of the cause of the pressure is now reduced to this—What was the cause of the banks refusing the required accommodations?

The governor and committee say that the Bank of the United States unnecessarily contracted its discounts and produced the alarm or panic which compelled the state banks to reduce their accommodations. In showing this allegation to be erroneous, I trust I shall be able to give a satisfactory answer to the question I have stated.

Until the last session of Congress, the avowed hostility of the

President, and his partisans, to the Bank of the United States, had been confined to measures tending to direct public opinion against a renewal of the charter, but in no wise affecting the *credit* and *pecuniary interests* of the institution. A new and bolder assault was then made, which nevertheless was legal and proper in form and manner. The Secretary of the Treasury announced to Congress suspicions of the solvency of the institution and consequently of the safety of the public moneys of which it was the depository. Almost simultaneously, an agent was appointed by the Secretary, and a committee of investigation by the House of Representatives, who were respectively charged with the duty of examining the condition of the bank. The result of both those investigations established the facts that the bank was solvent, and the public moneys entirely safe. The House of Representatives passed a resolution to that effect, and this was regarded by the directors of the bank, and the community, as conclusive that the public deposits would not be removed. The bank, as far as its credit was concerned, had passed unharmed through the investigation. But no sooner had Congress adjourned, than the President prepared for a new assault, one not like the other, within the forms of law and the ordinary mode of procedure, but one which was intentionally to be violent and injurious to the interests of the stockholders. To prepare the minds of his partisans for this measure, certain presses, known to enjoy his confidence, gave out that, although the deposits were safe, yet they nevertheless ought to be and would be removed, and that whatever doubts might exist, the President would in due time give satisfactory reasons for a course so unexpected. Mr. M'Lane, the Secretary of the Treasury, known to be opposed to the removal, was transferred to the State Department, and Mr. Duane, who was appointed in his place, was, with probable reason, supposed to concur with the President. To these significant indications the directors of the bank could not be inattentive. In the month of June, a secret negotiation was carried on by the President with local banks, to transfer the public moneys to them. Thus it came to the knowledge of the directors of the Bank of the United States, that the institution was to be deprived of the moneys, the custody of which was guaranteed to it by law; but when? for what cause? in what manner? and whether all at once, or from time to time? were studiously concealed. This conduct of the administration indicated that the measure was to be so

conducted that the blow should be as injurious as it was intended to be vindictive. Such was the attitude assumed in the summer of 1833 by the administration toward the bank, on which commerce relied not only for accustomed, but for increased accommodation. The bank then had a right to apprehend from the executive the withdrawal of the government deposits, and the deprivation in future of the accruing public moneys. When the directors regarded the violence of the attack meditated by the President, when they considered that it was to be inflicted by the hand of one who wielded the executive power of the government, and whose influence controlled a majority in both houses of Congress, and who was supported by a press and a party possessing predominant influence in the Union, which had never failed to support every measure he had adopted; and when they considered that the avowed object of the measure was to enfeeble the institution, they were well justified in apprehending that a shock would be given to its credit, and that a demand of specie would ensue. Entertaining these apprehensions, what were the directors of the United States Bank to do? Obviously their duty to the institution, to the depositors, to the government, and to the country, was to prepare for the blow which was anticipated. But how must they prepare? Precisely as safety fund banks and all other banks do—by accumulating specie and reducing discounts. Such, sir, was the attitude into which the Executive brought the Bank of the United States.

Let us now turn to the state banks. Those institutions were indebted to the bank of the United States, in a sum greater than the aggregate of specie in their vaults. They anticipated that they would be required to pay that debt, so as to enable that institution to comply with the demands of the government. They, too, were to change their relations toward that institution. Charged henceforward with the regulation of the currency, it was necessary for them to look elsewhere than to the favor of the United States Bank for the specie required to maintain their circulation. They, too, apprehended a shock to confidence, and thus they were compelled to prepare for the emergency, by the reduction of their debts and circulation. Thus, at the same time, when commerce required extraordinary accommodations, not only the United States Bank, the local banks, but new ones also, were compelled by the executive to retrench. The decision of the

President, that the deposits should be removed, was announced on the 21st of September. The shock apprehended was immediately experienced, as is proved by the fact that the deposits of *individuals* in the United States Bank were immediately reduced. Thus, from the first of October to the first of November, the public deposits were reduced 1,636,124 dollars, and the private deposits were within the same time reduced 1,723,821 dollars, making the whole reduction of deposits 3,359,945 dollars. It will astonish those who have read the governor's message and the report of the committee, to learn that, notwithstanding this immense reduction of deposits in consequence of the acts of the executive, the United States Bank actually reduced its discounts during the same period, only 2,883,594 dollars.

During all this period of pressure, the United States Bank has left in the state banks an average amount uncalled for, of 3,464,956 dollars. Sir, I put to all candid men in the Senate the question, whether the Bank of the United States has oppressed the country or the state banks? No man but a reckless partisan will answer this question in the affirmative. Sir, the judgment of bankers and merchants (and they are most competent to decide upon the matter, and have the deepest interest in it) approves and acquits the United States Bank. But while that institution has been able to sustain itself with so very slight a reduction of discounts, the pressure has, in a much greater ratio, diminished the ability of the state banks to keep up their discounts and circulation. How much they have reduced either, is not ascertained; but the fact is known that, in this state alone, they have withdrawn from circulation, three millions of dollars. Sir, it is with pain and regret that I remark that the message of the governor withholds all details and explanation on this interesting subject, and yet charges upon the United States Bank a wanton and unnecessary reduction of its discounts for the purpose of oppressing the people.

Sir, were it true that this pressure has been produced by those whom his excellency stoops to stigmatize, what then? Is gross usurpation to be tolerated, because to resist and expose it may produce a panic? Never, sir, will I submit to such a policy while I have any responsibility as a citizen.

But, sir, neither those who produced, nor those who prolonged this panic, were the opponents of the administration. The President and his partisans—they are responsible for it all. To them I

have traced its origin. They have had the power to arrest it. They have sullenly refused. When the voice of complaint reached them, they declared it false and factious. When the reality of the pressure could no longer be denied, they answered that it could affect none but those who employed borrowed capital, and they were entitled to neither relief nor sympathy. When this unfeeling response would no longer avail, the country was assured that the President was trying an experiment, to see if state banks could not be substituted as the fiscal agents of the government. The sincerity of this answer was questioned, and then came the bolder avowal that the President was making an experiment, whether local banks, as well as the general institution, could not be dispensed with altogether, and the people be brought back to a specie currency—a retrograde movement more injurious than an Agrarian law. Thus, as the excitement has increased, the usurpation of the President has grown bolder. The conduct of the executive, the rude denial of all relief, the promulgation of these crude theories and bold and unconstitutional purposes—these have nourished the vulture *distrust*, which has fastened upon the currency.

Sir, there was never a charge so reckless as that made by the governor, that there has been manifested by the United States Bank an especial hostility to this *state* and *its institutions*. During all this pressure, that institution has kept up its discounts both at New York and Buffalo, to their accustomed amounts. And there has been constantly due a large balance from the New York banks. If there is any one fact clearly established, it is that the institution has curtailed its operations elsewhere to sustain the commerce of the city of New York, where its discounts were increased, from the 1st of October to the 1st of February, from 6,180,833 dollars to 6,458,540 dollars; while the public deposits in the institution were reduced from 4,130,322 dollars to 258,350 dollars. Sir, he must calculate largely upon popular credulity, who, with these facts before him, will put forth such an allegation.

There is one other allegation in the message and in the report of the committee so disingenuous that I cannot pass it by without animadversion. These documents assert that the removal of the deposits did not diminish the ability of the bank to continue and increase its discounts, and yet the President and Secretary, nevertheless assign as the reason for the removal, that it was necessary in order to compel the bank to reduce its discounts and prepare

for its dissolution. The governor and this very legislature, scarcely three months ago, approved the removal for that very reason. Sir, how enviable is that abundant measure of glory which covers such inconsistencies as this!

If I have been at all successful, I have shown that all the evils hitherto experienced and yet to be apprehended from the pressure, are the necessary consequences of the removal of the deposits. The governor and committee have revived the question, *whether that removal was necessary?* Having once discussed that question in this place, I shall be very brief upon it now. But how are circumstances changed since that discussion! *Then* we were assured there was not, nor could there be, any pressure; *now* a pressure exists so alarming that the state is seen borrowing six millions for the relief of its citizens!

The reasons given were vindictive. It was necessary to punish the bank and to diminish its power. To which it ought to be a sufficient answer, 1st. That in inflicting this punishment, the President assumed legislative power, defining the offence and the penalty, judicial power convicting the bank, and executive power, conferred by no law, enforcing the punishment.

But if this be not a sufficient reply to those who think such powers may be safely assumed by the executive, then I would say to them they can now see how blind revenge is! The penalty has been inflicted, the blow has fallen, the *offender* is unharmed, is still as strong, as powerful as before. Where, then, has the blow fallen? Look upon this suffering country, and see in her the victim! But there was the pretext of the public good, the public morals were to be saved by preventing the renewal of the charter of the bank. Sir, in my experience, I have never seen any thing so preposterous as this affected alarm at the power of the bank. Of all the institutions of the country, it is the most powerless, the most defenceless. Popular feeling is most easily directed against it. Honor, firmness, candor, moral courage, are necessary to maintain its cause even against false accusations; but it is the braggart's bravery to crowd into the foremost rank of its assailants. It is supererogatory to add that legislative action is necessary to confer on the executive the power to preserve the public morals.

Sir, if I have established the several preliminary points I have stated, it will follow that the measure to be adopted in order to

afford relief to the community, must be one which will revive confidence, now prostrate, throughout the Union. Although this pressure originated in a temporary deficiency of money for the purposes of business, the evil has become that of the general destruction of mutual confidence between individuals, and, to a great and alarming extent, the destruction of confidence in the currency. The system of commercial business, and the operations of the currency, extend throughout the country. The relief proposed by this bill is merely local—it is temporary and cannot be adequate.

But it is on the ground of the *corrupting* operation of this measure that I most strenuously protest against it. In addition to a debt of two and a half millions owed to the Treasury by the state banks, you would loan them four millions, you would make it their interest to become subservient and to do the will of those who wield the power of the state—you would thus establish directly and inevitably a great moneyed power to be wielded by the public officers; in other words, by the dominant party through the agency of moneyed corporations operating directly upon the people. The consequence of this will be the corruption of the government, the banks, and the people. Nor is the two million loan in the country less objectionable in this respect. You are in a season of extreme pressure and distress, holding out to the people the enormous sum of two millions. You appeal to the cupidity of some, and operate upon the necessities of others in every county in the state. You would bring all the needy to exercise their influence on the supervisors to draw their portion of the loan. The board of supervisors would yield, the money would be placed in the hands of loan officers. In my place as a Senator, I declare that to be opposed to the administration is a disqualification for the office of loan officers. Those loan officers would distribute the sum which, although inadequate to the general relief, would still be a sufficient bribe to the weak, the unfortunate, the timid and the unprincipled. It is easy to imagine who then would be the recipients of this bounty of the state. And all would know or feel that to participate in it, they must give their political support to those who should dispense it.

Thus, sir, in this free republic, is the money of the people proposed to be employed by the government to corrupt the people themselves. The two millions would become a great corruption fund more dangerous than the gold of Sir Henry Clinton paid to

the traitor Arnold, more destructive of the virtue of the people than were the bribes paid by Philip of Macedon to the Athenian orators.

Sir, I blush that it has been reserved for the Legislature of New York to establish such a system as this—although, if it must be adopted, I cannot regret that the honor of its paternity belongs to one whose fame as a Representative of this state in the Senate of the United States, rests upon his declaration of the principle that, in reference to political discussions, "to the victor belongs the spoils of the enemy."

Mr. President, I have shown that relief ought to be given to the people of this state, under an unnecessary and cruel pressure. I have shown, I am sure I have shown that this bill would not afford that relief, and ought not to pass. What, then, is there no relief? Is there no way to arrest the march of this DISTRUST which is spreading ruin throughout the land?

Yes, there is a remedy—one in the power of this legislature to grant; one that will be neither contingent, nor remote, nor inadequate, but immediate, certain and effectual; one that will revive languishing commerce, agriculture and manufactures—nay, more—one whose operation will not be limited by the borders of our state: it will recall confidence and prosperity everywhere throughout this land. To give that relief will require no money, no loan, no expense, no risk—it will compromit no principle, it will work no injury, nor be fraught with any danger to the people. One sacrifice it requires, but that is a personal one to be made by the members of the legislature. That sacrifice is difficult, but it can work them no injury. They who make it will be approved and applauded and hailed by the generous people who have confided in and honored us as their deliverers from suffering which they as well as we had not foreseen. That sacrifice, however, is one seldom made. None but great minds can make it. It is therefore more precious in the eyes of good men. To make that sacrifice is the only human virtue which can gain the favor of Him who is altogether pure and altogether just. It is the sacrifice of pride, of opinion—the acknowledgment of error. Let this legislature say to those who will obey their will at Washington, because they depend upon their support—"Restore the public treasures to their lawful depository; cease this unnatural and unnecessary warfare against the interests of the people, and these ruinous experi-

ments." Say to the executive—"Surrender to Congress and the judiciary their constitutional powers, and leave to Congress and to the people the questions of the bank of *the* United States, *a* bank, or *no* bank of the United States." Sir, this legislature, when it should so speak, would be obeyed. I could almost envy them the errors which have given them so great a power to bless their country. Sir, I would not, for all my country's wealth, (and who does not desire to participate in it?) for all my country's honors, (and who does not prize the favor of his fellow citizens?) bear the responsibility assumed by those who have brought this ruin upon the country. More than that man who might obtain *all* that wealth and *all* those honors, would I envy those who should make the sacrifice I have demanded.

Sir, if that sacrifice be not made, it is not here that this question will be decided—it must go to the polls, where the votes of those who here make laws, will be of no more weight than those of the poorest sufferers in the land. Those reckon too much on the ignorance of the people, who think they cannot understand the cause of these calamities; those reckon too much on their corruptibility, who think they will not reject with scorn this mockery of relief. But, be it so, if there the issue must go. Heaven will not only have withdrawn its favor from this people, but reversed its principles of justice, if the victory be not to the oppressed.

NOTE.—During the four years that Mr. Seward was a member of the state senate, he delivered speeches against Executive interference with the United States Bank; in favor of abolishing Imprisonment for Debt; against increasing the salaries of the Chancellor and the Judges of the Supreme Court; in favor of a separate Prison for Females; against an increase of Corporations and Monopolies; in favor of preparing and publishing the Colonial History of the State; and on several other topics of public interest. But we have to regret that none but very imperfect reports of most these speeches were made at the time, or have been preserved. From the allusions to them which we find in a file of newspapers of that day, we learn that they were marked with great ability, and that they produced decided effect at the time, and were instrumental in producing that political revolution which soon after brought the party to which Mr. Seward belonged into power, with him at its head.—ED.

SPEECHES IN THE UNITED STATES SENATE.

SPEECHES

IN

THE SENATE OF THE UNITED STATES.

FREEDOM IN THE NEW TERRITORIES.

MARCH 11, 1850.

Four years ago, California, a Mexican province, scarcely inhabited and quite unexplored, was unknown even to our usually immoderate desires, except by a harbor, capacious and tranquil, which only statesmen then foresaw would be useful in the oriental commerce of a far distant, if not merely chimerical, future.

A year ago, California was a mere military dependency of our own, and we were celebrating with unanimity and enthusiasm its acquisition, with its newly-discovered but yet untold and untouched mineral wealth, as the most auspicious of many and unparalleled achievements.

To-day, California is a state, more populous than the least and richer than several of the greatest of our thirty states. This same California, thus rich and populous, is here asking admission into the Union, and finds us debating the dissolution of the Union itself.

No wonder if we are perplexed with ever-changing embarrassments! No wonder if we are appalled by ever-increasing responsibilities! No wonder if we are bewildered by the ever-augmenting magnitude and rapidity of national vicissitudes!

Shall California be received? For myself, upon my individual judgment and conscience, I answer, Yes. For myself, as an instructed representative of one of the states, of that one even of the states which is soonest and longest to be pressed in commercial

and political rivalry by the new commonweath, I answer, Yes. Let California come in. Every new state, whether she come from the east or from the west, every new state, coming from whatever part of the continent she may, is always welcome. But California, that comes from the clime where the west dies away into the rising east; California, that bounds at once the empire and the continent; California, the youthful queen of the Pacific, in her robes of freedom, gorgeously inlaid with gold—is doubly welcome.

And now I inquire, first, *Why should California be rejected?* All the objections are founded only in the circumstances of her coming, and in the organic law which she presents for our confirmation.

1st. California comes UNCEREMONIOUSLY, without a *preliminary* consent of Congress, and therefore by usurpation. This allegation, I think, is not quite true; at least, not quite true in spirit. California is here not of her own pure volition. We tore California and New Mexico violently from their places in the confederation of Mexican states, and stipulated, by the treaty of Guadalupe Hidalgo, that the territories thus acquired should be admitted as states into the American Union as speedily as possible.

But the letter of the objection still holds. California does come without having obtained a preliminary consent of Congress to form a constitution. But Michigan and other states presented themselves in the same unauthorized way, and Congress *waived the irregularity*, and sanctioned the usurpation. California pleads these precedents. Is not the plea sufficient?

But it has been said by the honorable senator from South Carolina, [Mr. CALHOUN,] that the ordinance of 1787 secured to Michigan the right to become a state, when she should have sixty thousand inhabitants, and that, owing to some neglect, Congress delayed taking the census. This is said in palliation of the irregularity of Michigan. But California, as has been seen, had a treaty, and Congress, instead of giving previous consent, and instead of giving her the customary territorial government, as they did to Michigan, failed to do either, and thus practically refused both, and so abandoned the new community, under most unpropitious circumstances, to anarchy. California then made a constitution for herself, but not unnecessarily and presumptuously, as Michigan did. She made a constitution for herself, and she comes here under the law, the paramount law, of self-preservation.

In that she stands justified. Indeed, California is more than justified. She was a *colony*, a *military* colony. All colonies, especially military colonies, are incongruous with our political system, and they are equally open to corruption and exposed to oppression. They are, therefore, not more unfortunate in their own proper condition than fruitful of dangers to the parent democracy. California, then, acted wisely and well in establishing self-government. She deserves not rebuke, but praise and approbation. Nor does the objection come with a good grace from those who offer it. If California were now content to receive only a territorial charter, we could not agree to grant it without an inhibition of slavery, which, in that case, being a federal act, would render the attitude of California, as a territory, even more offensive to those who now repel her than she is as a state, with the same inhibition in the constitution of her own voluntary choice.

A second objection is, that *California has assigned her own boundaries without the previous authority of Congress.* But she was left to organize herself without any boundaries fixed by previous law or by prescription. She was obliged, therefore, to assume boundaries, since without boundaries she must have remained unorganized.

A third objection is, that *California is too large.*

I answer, first, there is no common standard of states. California, although greater than many, is less than one of the states.

Secondly. California, if too large, may be divided with her own consent, and a similar provision is all the security we have for reducing the magnitude and averting the preponderance of Texas.

Thirdly. The boundaries of California seem not at all *unnatural.* The territory circumscribed is altogether contiguous and compact.

Fourthly. The boundaries are *convenient.* They embrace only inhabited portions of the country, commercially connected with the port of San Francisco. No one has pretended to offer boundaries more in harmony with the physical outlines of the region concerned, or more convenient for civil administration.

But to draw closer to the question, What shall be the boundaries of a new state? concerns—

First. The state herself; and California, of course, is content.

Secondly. Adjacent communities; Oregon does not complain

of encroachment, and there is no other adjacent community to complain.

Thirdly. The other states of the Union; the larger the Pacific states, the smaller will be their relative power in the Senate. All the states now here are either Atlantic states or inland states, and surely they may well indulge California in the largest liberty of boundaries.

The fourth objection to the admission of California is, that no census had been taken, and no laws prescribing the qualifications of suffrage and the apportionment of representatives in convention, existed before her convention was held.

I answer, California was left to act *ab initio*. She must begin somewhere, without a census, and without such laws. The pilgrim fathers began in the same way on board the Mayflower; and, since it has been objected that some of the electors in California may have been aliens, I add, that all of the pilgrim fathers were aliens and strangers to the commonwealth of Plymouth.

Again, the objection may well be *waived*, if the constitution of California is satisfactory, first to herself, secondly to the United States.

Not a murmur of discontent has followed California to this place.

As to ourselves, we confine our inquiries about the constitution of a new state to four things—

1st. The *boundaries* assumed; and I have considered that point in this case already.

2d. That the domain within the state is secured to us; and it is admitted that this has been properly done.

3d. That the constitution shall be republican, and not aristocratic and monarchical. In this case, the only objection is, that the constitution, inasmuch as it inhibits slavery, is altogether too republican.

4th. That the representation claimed shall be just and equal. No one denies that the population of California is sufficient to demand two representatives on the federal basis; and, secondly, a new census is at hand, and the error, if there is one, will be immediately corrected.

The fifth objection is, that *California comes under executive influence.*

1st. In her coming as a free state.

2d. In her coming at all.

The first charge rests on suspicion only, and is peremptorily denied, and the denial is not controverted by proofs. I dismiss it altogether.

The second is true, to the extent that the President advised the people of California, that, having been left without any civil government, under the military supervision of the Executive, without any authority of law whatever, their adoption of a Constitution, subject to the approval of Congress, would be regarded favorably by the President. Only a year ago, it was complained that the exercise of the military power to maintain law and order in California, was a fearful innovation. But now the wind has changed, and blows even stronger from the opposite quarter.

May this Republic never have a President commit a more serious or more dangerous usurpation of power than the act of the present eminent chief magistrate, in endeavoring to induce legislative authority to relieve him from the exercise of military power, by establishing civil institutions regulated by law in distant provinces! Rome would have been standing this day, if she had had only such generals and such consuls.

But the objection, whether true in part, or even in the whole, is immaterial. The question is, not what moved California to impress any particular feature on her constitution, nor even what induced her to adopt a constitution at all; but it is whether, since she has adopted a constitution, she shall be admitted into the Union.

I have now reviewed all the objections raised against the admission of California. It is seen that they have no foundation in the law of nature and of nations. Nor are they founded in the Constitution, for the Constitution prescribes no form or manner of proceeding in the admission of new states, but leaves the whole to the discretion of Congress. "Congress may admit new states." The objections are all merely formal and technical. They rest on precedents which have not always, nor even generally, been observed. But it is said that we ought now to establish a safe precedent for the future.

I answer, 1st: It is too late to seize this occasion for that purpose. The irregularities complained of being unavoidable, the caution should have been exercised when, 1st, Texas was annexed;

2d, when we waged war against Mexico; or, 3d, when we ratified the treaty of Guadalupe Hidalgo.

I answer, 2d: We may establish precedents at pleasure. Our successors will exercise *their* pleasure about following them, just as we have done in such cases.

I answer, 3d: States, nations, and empires, are apt to be peculiarly capricious, not only as to the *time*, but even as to the *manner*, of their being born, and as to their subsequent political changes. They are not accustomed to conform to precedents. California sprang from the head of the nation, not only complete in proportions and full armed, but ripe for affiliation with its members.

I proceed now to state my reasons for the opinion that CALIFORNIA OUGHT TO BE ADMITTED. The population of the United States consists of natives of Caucasian origin, and exotics of the same derivation. The native mass rapidly assimilates to itself and absorbs the exotic, and thus these constitute one homogeneous people. The African race, bond and free, and the aborigines, savage and civilized, being incapable of such assimilation and absorption, remain distinct; and, owing to their peculiar condition, they constitute inferior masses, and may be regarded as accidental if not disturbing political forces. The ruling homogeneous family planted at first on the Atlantic shore, and following an obvious law, is seen continually and rapidly spreading itself westward year by year, subduing the wilderness and the prairie, and thus extending this great political community, which, as fast as it advances, breaks into distinct states for municipal purposes only, while the whole constitutes one entire contiguous and compact nation.

Well established calculations in political arithmetic, enable us to say that the aggregate population of the nation

now is	22,000,000
That 10 years hence it will be	30,000,000
That 20 years hence it will be	38,000,000
That 30 years hence it will be	50,000,000
That 40 years hence it will be	64,000,000
That 50 years hence it will be	80,000,000
That 100 years hence, that is, in the year 1950, it will be	200,000,000

equal nearly to one-fourth of the present aggregate population of the globe, and double the population of Europe at the time of

the discovery of America. But the advance of population on the Pacific will far exceed what has heretofore occurred on the Atlantic coast, while emigration even here is outstripping the calculations on which the estimates are based. There are silver and gold in the mountains and ravines of California. The granite of New England and New York is barren.

Allowing due consideration to the increasing density of our population, we are safe in assuming, that long before this mass shall have attained the maximum of numbers indicated, the entire width of our possessions from the Atlantic to the Pacific ocean will be covered by it, and be brought into social maturity and complete political organization.

The question now arises, Shall this one great people, having a common origin, a common language, a common religion, common sentiments, interests, sympathies, and hopes, remain one political state, one nation, one republic, or shall it be broken into two conflicting and probably hostile nations or republics? There cannot ultimately be more than two; for the habit of association is already formed, as the interests of mutual intercourse are being formed. It is already ascertained where the centre of political power must rest. It must rest in the agricultural interests and masses, who will occupy the interior of the continent. These masses, if they cannot all command access to both oceans, will not be obstructed in their approaches to that one, which shall offer the greatest facilities to their commerce.

Shall the American people, then, be divided? Before deciding on this question, let us consider our position, our power, and capabilities.

The world contains no seat of empire so magnificent as this; which, while it embraces all the varying climates of the temperate zone, and is traversed by wide expanding lakes and long-branching rivers, offers supplies on the Atlantic shores to the over-crowded nations of Europe, while on the Pacific coast it intercepts the commerce of the Indies. The nation thus situated, and enjoying forest, mineral, and agricultural resources unequaled, if endowed also with moral energies adequate to the achievement of great enterprises, and favored with a government adapted to their character and condition, must command the empire of the seas, which alone is real empire.

We think that we may claim to have inherited physical and

intellectual vigor, courage, invention, and enterprise; and the systems of education prevailing among us open to all the stores of human science and art.

The old world and the past were allotted by Providence to the pupilage of mankind, under the hard discipline of arbitrary power, quelling the violence of human passions. The new world and the future seem to have been appointed for the maturity of mankind, with the development of self-government operating in obedience to reason and judgment.

We have thoroughly tried our novel system of Democratic Federal Government, with its complex, yet harmonious and effective combination of distinct local elective agencies, for the conduct of domestic affairs, and its common central elective agencies, for the regulation of internal interests and of intercourse with foreign nations; and we know that it is a system equally cohesive in its parts, and capable of all desirable expansion; and that it is a system, moreover, perfectly adapted to secure domestic tranquillity, while it brings into activity all the elements of national aggrandizement. The Atlantic states, through their commercial, social, and political affinities and sympathies, are steadily renovating the governments and the social constitutions of Europe and of Africa. The Pacific states must necessarily perform the same sublime and beneficent functions in Asia. If, then, the American people shall remain an undivided nation, the ripening civilization of the West, after a separation growing wider and wider for four thousand years, will, in its circuit of the world, meet again and mingle with the declining civilization of the East on our own free soil, and a new and more perfect civilization will arise to bless the earth, under the sway of our own cherished and beneficent democratic institutions.

We may then reasonably hope for greatness, felicity, and renown, excelling any hitherto attained by any nation, if, standing firmly on the continent, we loose not our grasp on the shore of either ocean. Whether a destiny so magnificent would be only partially defeated, or whether it would be altogether lost, by a relaxation of that grasp, surpasses our wisdom to determine, and happily it is not important to be determined. It is enough, if we agree that expectations so grand, yet so reasonable and so just, ought not to be in any degree disappointed. And now it seems

to me that the perpetual unity of the empire hangs on the decision of this day and of this hour.

California is already a state—a complete and fully appointed state. She never again can be less than that. She can never again be a province or a colony; nor can she be made to shrink and shrivel into the proportions of a federal dependent territory. California, then, henceforth and forever, must be, what she is now, a state.

The question whether she shall be one of the United States of America *has* depended on her and on us. Her election has been made. Our consent alone remains suspended; and that consent must be pronounced now or never. I say *now* or *never*. Nothing prevents it now, but want of agreement among ourselves. Our harmony cannot increase while this question remains open. We shall never agree to admit California, unless we agree now. Nor will California abide delay. I do not say that she contemplates independence; but, if she does not, it is because she does not anticipate rejection. Do you say that she can have no motive? Consider, then, her attitude, if rejected. She needs a constitution, a legislature, and magistrates; she needs titles to that golden domain of yours within her borders; good titles, too; and you must give them on your own terms, or she must take them without your leave. She needs a mint, a custom-house, wharves, hospitals, and institutions of learning; she needs fortifications, and roads, and railroads; she needs the protection of an army and a navy; either your stars and stripes must wave over her ports and her fleets, or she must raise aloft a standard for herself; she needs, at least, to know whether you are friends or enemies; and, finally, she needs, what no American community can live without, sovereignty and independence—either a just and equal share of yours, or sovereignty and independence of her own.

Will you say that California could not aggrandize herself by separation? Would it, then, be a mean ambition to set up within fifty years, on the Pacific coast, monuments like those which we think two hundred years have been well spent in establishing on the Atlantic coast?

Will you say that California has no ability to become independent? She has the same moral ability for enterprise that inheres in us, and that ability implies command of all physical means. She has advantages of position. She is practically fur-

ther removed from us than England. We cannot reach her by railroad, nor by unbroken steam navigation. We can send no armies over the prairie, the mountain, and the desert, nor across the remote and narrow Isthmus within a foreign jurisdiction, nor around the Cape of Storms. We may send a navy there, but she has only to open her mines, and she can seduce our navies and appropriate our floating bulwarks to her own defence. Let her only seize our domain within her borders, and our commerce in her ports, and she will have at once revenues and credit adequate to all her necessities. Besides, are we so moderate, and has the world become so just, that we have no rivals and no enemies to lend their sympathies and aid to compass the dismemberment of our empire?

Try not the temper and fidelity of California—at least not now—not yet. Cherish her and indulge her until you have extended your settlements to her borders, and bound her fast by railroads, and canals, and telegraphs, to your interests—until her affinities of intercourse are established, and her habits of loyalty are fixed—and then she can never be disengaged.

California would not go alone. Oregon, so intimately allied to her, and as yet so loosely attached to us, would go also; and then at least the entire Pacific coast, with the western declivity of the Sierra Nevada, would be lost. It would not depend at all upon us, nor even on the mere forbearance of California, how far eastward the long line across the temperate zone should be drawn, which should separate the Republic of the Pacific from the Republic of the Atlantic. Terminus has passed away, with all the deities of the ancient Pantheon, but his sceptre remains. Commerce is the god of boundaries, and no man now living can foretell his ultimate decree.

But it is insisted that the admission of California shall be attended by a COMPROMISE of questions which have arisen out of SLAVERY!

I AM OPPOSED TO ANY SUCH COMPROMISE, IN ANY AND ALL THE FORMS IN WHICH IT HAS BEEN PROPOSED; because, while admitting the purity and the patriotism of all from whom it is my misfortune to differ, I think all legislative compromises, which are not absolutely necessary, radically wrong and essentially vicious. They involve the surrender of the exercise of judgment and conscience on distinct and separate questions, at distinct and separate

times, with the indispensable advantages it affords for ascertaining truth. They involve a relinquishment of the right to reconsider in future the decisions of the present, on questions prematurely anticipated. And they are acts of usurpation as to future questions of the province of future legislators.

Sir, it seems to me as if slavery had laid its paralyzing hand upon myself, and the blood were coursing less freely than its wont through my veins, when I endeavor to suppose that such a compromise has been effected, and that my utterance forever is arrested upon all the great questions—social, moral, and political—arising out of a subject so important, and as yet so incomprehensible.

What am I to receive in this compromise? Freedom in California. It is well; it is a noble acquisition; it is worth a sacrifice. But what am I to give as an equivalent? A recognition of the claim to perpetuate slavery in the District of Columbia; forbearance toward more stringent laws concerning the arrest of persons suspected of being slaves found in the free states; forbearance from the *proviso* of freedom in the charters of new territories. None of the plans of compromise offered demand less than two, and most of them insist on all of these conditions. The equivalent, then, is, some portion of liberty, some portion of human rights in one region for liberty in another region. But California brings gold and commerce as well as freedom. I am, then, to surrender some portion of human freedom in the District of Columbia, and in East California and New Mexico, for the mixed consideration of liberty, gold, and power, on the Pacific coast.

This view of legislative compromises is not *new*. It has widely prevailed, and many of the state constitutions interdict the introduction of more than one subject into one bill submitted for legislative action.

It was of such compromises that Burke said, in one of the loftiest bursts of even his majestic parliamentary eloquence:

"Far, far from the commons of Great Britain be all manner of real vice; but ten thousand times farther from them, as far as from pole to pole, be the whole tribe of spurious, affected, counterfeit, and hypocritical virtues! These are the things which are ten thousand times more at war with real virtue, these are the things which are ten thousand times more at war with real duty, than any vice known by its name and distinguished by its proper character.

"Far, far from us be that false and affected candor that is eternally in treaty with crime—that half virtue, which, like the ambiguous animal that flies about in the twilight of a compromise between day and night, is, to a just man's eye, an odious and disgusting thing. There is no middle point, my lords, in which the commons of Great Britain can meet tyranny and oppression."

But, sir, if I could overcome my repugnance to compromises in general, I should object to this one, on the ground of the *inequality* and *incongruity* of the interests to be compromised. Why, sir, according to the views I have submitted, California ought to come in, and must come in, whether slavery stand or fall in the District of Columbia; whether slavery stand or fall in New Mexico and Eastern California; and even whether slavery stand or fall in the slave states. California ought to come in, being a free state; and, under the circumstances of her conquest, her compact, her abandonment, her justifiable and necessary establishment of a constitution, and the inevitable dismemberment of the empire consequent upon her rejection, I should have voted for her admission even if she had come as a slave state. California ought to come in, and must come in at all events. It is, then, an independent, a paramount question. What, then, are these questions arising out of slavery, thus interposed, but collateral questions? They are unnecessary and incongruous, and therefore false issues, not introduced designedly, indeed, to defeat that great policy, yet unavoidably tending to that end.

Mr. Foote. Will the honorable senator allow me to ask him, if the Senate is to understand him as saying that he would vote for the admission of California if she came here seeking admission as a slave state?

Mr. Seward. I reply, as I said before, that even if California had come as a slave state, yet coming under the extraordinary circumstances I have described, and in view of the consequences of a dismemberment of the empire, consequent upon her rejection, I should have voted for her admission, even though she had come as a slave state. But I should not have voted for her admission otherwise.

I remark in the next place, that consent on my part would be disingenuous and fraudulent, because the compromise would be unavailing.

It is now avowed by the honorable senator from South Carolina, [Mr. Calhoun,] that nothing will satisfy the slave states but a compromise that will convince them that they can remain in the Union consistently with their honor and their safety. And what are the concessions which will have that effect. Here they are, in the words of that senator:

"The north must do justice by conceding to the south an equal right in the acquired territory, and do her duty by causing the stipulations relative to fugitive slaves to be

faithfully fulfilled—cease the agitation of the slave question, and provide for the insertion of a provision in the Constitution, by an amendment, which will restore to the south in substance the power she possessed, of protecting herself, before the equilibrium between the sections was destroyed by the action of this government."

These terms amount to this: that the free states having already, or although they may hereafter have, majorities of population, and majorities in both houses of Congress, shall concede to the slave states, being in a minority in both, the unequal advantage of an equality. That is, that we shall alter the Constitution so as to convert the Government from a national democracy, operating by a constitutional majority of voices, into a federal alliance, in which the minority shall have a veto against the majority. And this would be nothing less than to return to the original Articles of Confederation.

I will not stop to protest against the injustice or the inexpediency of an innovation which, if it was practicable, would be so entirely subversive of the principle of democratic institutions. It is enough to say that it is totally impracticable. The free states, northern and western, have acquiesced in the long and nearly unbroken ascendency of the slave states under the Constitution, because the result happened under the Constitution. But they have honor and interests to preserve, and there is nothing in the nature of mankind, or in the character of that people to induce an expectation that they, loyal as they are, are insensible to the duty of defending them. But the scheme would still be impracticable, even if this difficulty were overcome. What is proposed is a *political* equilibrium. Every political equilibrium requires a *physical* equilibrium to rest upon, and is valueless without it. To constitute a physical equilibrium between the slave states and the free states, requires, first, an equality of territory, or some near approximation. And this is already lost. But it requires much more than this. It requires an equality or a proximate equality in the number of slaves and freemen. And this must be perpetual.

But the census of 1840 gives a slave basis of only 2,500,000, and a free basis of 14,500,000. And the population on the slave basis increases in the ratio of 25 per cent. for ten years, while that on the free basis advances at the rate of 38 per cent. The accelerating movement of the free population, now complained of, will occupy the new territories with pioneers, and every day increases the difficulty of forcing or insinuating slavery into regions

which freemen have pre-occupied. And if this were possible, the African slave trade is prohibited, and the domestic increase is not sufficient to supply the new slave states which are expected to maintain the equilibrium. The theory of a new political equilibrium claims that it once existed, and has been lost. When lost, and how? It began to be lost in 1787, when preliminary arrangements were made to admit five new free states in the northwest territory, two years before the Constitution was finally adopted; that is, it began to be lost two years before it began to exist!

Sir, the equilibrium, if restored, would be lost again, and lost more rapidly than it was before. The progress of the free population is to be accelerated by increased emigration, and by new tides from South America and from Europe and Asia, while that of the slaves is to be checked and retarded by inevitable partial emancipation. "Nothing," says Montesquieu, "reduces a man so low as always to see freemen, and yet not be free. Persons in that condition are natural enemies of the state, and their numbers would be dangerous if increased too high." Sir, the fugitive slave colonies and the emancipated slave colonies in the free states, in Canada, and in Liberia, are the best guaranties South Carolina has for the perpetuity of slavery.

Nor would success attend any of the details of this compromise. And, first, I advert to the proposed alteration of the law concerning fugitives from service or labor. I shall speak on this as on all subjects, with due respect, but yet frankly and without reservation. The Constitution contains only a compact, which rests for its execution on the states. Not content with this, the slave states induced legislation by Congress; and the Supreme Court of the United States have virtually decided that the whole subject is within the province of Congress, and exclusive of state authority. Nay, they have decided that slaves are to be regarded not merely as persons to be claimed, but as property and chattels, to be seized without any legal authority or claim whatever. The compact is thus subverted by the procurement of the slave states. With what reason, then, can they expect the states *ex gratia* to reassume the obligations from which they caused those states to be discharged? I say, then, to the slave states, you are entitled to no more stringent laws; and that such laws would be useless. The cause of the inefficiency of the present statute is not at all

the leniency of its provisions. It is a law that deprives the alleged refugee from a legal obligation not assumed by him, but imposed upon him by laws enacted before he was born, of the writ of *habeas corpus*, and of any certain judicial process of examination of the claim set up by his pursuer, and finally degrades him into a chattel which may be seized and carried away peaceably wherever found, even although exercising the rights and responsibilities of a free citizen of the commonwealth in which he resides, and of the United States—a law which denies to the citizen all the safeguards of personal liberty, to render less frequent the escape of the bondman. And since complaints are so freely made against the one side, I shall not hesitate to declare that there have been even greater faults on the other side. Relying on the perversion of the Constitution, which makes slaves mere chattels, the slave states have applied to them the principles of the criminal law, and have held that he who aided the escape of his fellow-man from bondage was guilty of a larceny in stealing him. I speak of what I know. Two instances came within my own knowledge, in which governors of slave states, under the provision of the Constitution relating to fugitives from justice, demanded from the governor of a free state the surrender of persons as thieves whose alleged offences consisted in constructive larceny of the rags that covered the persons of female slaves, whose attempt at escape they had permitted or assisted.

We deem the principle of the law for the recapture of fugitives, as thus expounded, therefore, unjust, unconstitutional, and immoral; and thus, while patriotism withholds its approbation, the consciences of our people condemn it.

You will say that these convictions of ours are disloyal. Grant it for the sake of argument. They are, nevertheless, honest; and the law is to be executed among us, not among you; not by us, but by the federal authority. Has any government ever succeeded in changing the moral convictions of its subjects by force? But these convictions imply no disloyalty. We reverence the Constitution, although we perceive this defect, just as we acknowledge the splendor and the power of the sun, although its surface is tarnished with here and there an opaque spot.

Your constitution and laws convert hospitality to the refugee from the most degrading oppression on earth into a crime, but all mankind except you esteem that hospitality a virtue. The

right of extradition of a fugitive from justice is not admitted by the law of nature and of nations, but rests in voluntary compacts. I know of only two compacts found in diplomatic history that admitted EXTRADITION OF SLAVES. Here is one of them. It is found in a treaty of peace made between Alexander, Comnenus, and Leontine, Greek Emperors at Constantinople, and Oleg, King of Russia, in the year 902, and is in these words:

"If a Russian slave take flight, or even if he is carried away by any one, under pretence of having been bought, his master shall have the right and power to pursue him, and hunt for and capture him wherever he shall be found; and any person who shall oppose the master in the execution of this right, shall be deemed guilty of violating this treaty, and be punished accordingly."

This was in the year of Grace, 902, in the period called the "Dark Ages," and the contracting powers were despotisms. And here is the other:

"No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up, on claim of the party to whom such service or labor is due."

This is from the Constitution of the United States in 1787, and the parties were the republican states of this Union. The law of nations disavows such compacts; the law of nature, written on the hearts and consciences of freemen, repudiates them. Armed power could not enforce them, because there is no public conscience to sustain them. I know that there are laws of various sorts which regulate the conduct of men. There are constitutions and statutes, codes mercantile and codes civil; but when we are legislating for states, especially when we are founding states, all these laws must be brought to the standard of the laws of God, and must be tried by that standard, and must stand or fall by it. This principle was happily explained by one of the most distinguished political philosophers of England in these emphatic words:

"There is but one law for all, namely, that law which governs all law; the law of our Creator, the law of humanity, justice, equity, the law of nature and of nations. So far as any laws fortify this primeval law, and give it more precision, more energy, more effect by their declarations, such laws enter into the sanctuary and participate in the sacredness of its character; but the man who quotes as precedents the abuses of tyrants and robbers, pollutes the very fountains of justice, destroys the foundations of all law, and therefore removes the only safeguard against evil men, whether governors or governed; the guard which prevents governors from becoming tyrants, and the governed from becoming rebels."

There was deep philosophy in the confession of an eminent English judge. When he had condemned a young woman to

death, under the late sanguinary code of his country, for her first petty theft, she fell down dead at his feet. "I seem to myself," said he, "to have been pronouncing sentence, not against the prisoner, but against the law itself."

To conclude on this point. We are not slaveholders. We cannot, in our judgment, be either true Christians or real freemen, if we impose on another a chain that we defy all human power to fasten on ourselves. You believe and think otherwise, and doubtless with equal sincerity. We judge you not, and He alone who ordained the conscience of man and its laws of action can judge us. Do we, then, in this conflict of opinion, demand of you an unreasonable thing in asking that, since you will have property that can and will exercise human powers to effect its escape, you shall be your own police, and in acting among us as such you shall conform to principles indispensable to the security of admitted rights of freemen? If you will have this law executed, you must alleviate, not increase, its rigors.

Another feature in most of these plans of compromise is a bill of peace for slavery in the District of Columbia; and this bill of peace we cannot grant. We of the free states are, equally with you of the slaves states, responsible for the existence of slavery in this district, the field exclusively of our common legislation. I regret that, as yet, I see little reason to hope that a majority in favor of emancipation exists here. The legislature of New York, from whom, with great deference, I dissent, seems willing to accept now the extinction of the slave trade, and waive emancipation. But we shall assume the whole responsibility if we stipulate not to exercise the power hereafter when a majority shall be obtained. Nor will the plea with which you would furnish us be of any avail. If I could understand so mysterious a paradox myself, I never should be able to explain to the apprehension of the people whom I represent, how it was that an absolute and express power to legislate in all cases over the District of Columbia was embarrassed and defeated by an implied condition not to legislate for the abolition of slavery in this district. Sir, I shall vote for that measure, and am willing to appropriate any means necessary to carry it into execution. And, if I shall be asked what I did to embellish the capital of my country, I will point to her freedmen, and say, These are the monuments of my munificence!

If I was willing to advance a cause that I deem sacred by disin-

genuous means, I would advise you to adopt those means of compromise which I have thus examined. The echo is not quicker in its response than would be that loud and universal cry of repeal, that would not die away until the *habeas corpus* was secured to the alleged fugitive from bondage, and the symmetry of the free institutions of the capital was perfected.

I apply the same observations to the proposition for a waiver of the proviso of freedom in territorial charters. Thus far you have only direct popular action in favor of that ordinance, and there seems even to be a partial disposition to await the action of the people of the new territories, as we have compulsorily waited for it in California. But I must tell you, nevertheless, in candor and in plainness, that the spirit of the people of the free states is set upon a spring that rises with the pressure put upon it. That spring, if pressed too hard, will give a recoil that will not leave here one servant who knew his master's will, and did it not.

You will say that this implies violence. Not at all. It implies only peaceful, lawful, constitutional, customary action. I cannot too strongly express my surprise that those who insist that the people of the slave states cannot be held back from remedies outside of the Constitution, should so far misunderstand us of the free states as to suppose we would not exercise our constitutional rights to sustain the policy which we deem just and beneficent.

I come now to notice the suggested *compromise of the boundary between Texas and New Mexico.* This is a judicial question in its nature, or at least a question of legal right and title. If it is to be compromised at all, it is due to the two parties, and to national dignity as well as to justice, that it be kept separate from compromises proceeding on the ground of expediency, and be settled by itself alone.

I take this occasion to say, that while I do not intend to discuss the questions alluded to in this connection by the honorable and distinguished senator from Massachusetts, I am not able to agree with him in regard to the alleged obligation of Congress to admit four new slave states, to be formed in the state of Texas. There are several questions arising out of that subject, upon which I am not prepared to decide now, and which I desire to reserve for future consideration. One of these is, whether the article of annexation does really deprive Congress of the right to exercise its choice in regard to the sub-division of Texas into four additional

states. It seems to me by no means so plain a question as the senator from Massachusetts assumed, and that it must be left to remain an open question, as it is a great question, whether Congress is not a party whose future consent is necessary to the formation of new states out of Texas.

Mr. Webster. Supposing Congress to have the authority to fix the number, and time of election, and apportionment of representatives, &c., the question is, whether, if new states are formed out of Texas, to come into this Union, there is not a solemn pledge by law that they have a right to come in as slave states?

Mr. Seward. When the states are once formed, they have the right to come in as free or slave states, according to their own choice; but what I insist is, that they cannot be formed at all without the consent of Congress, to be hereafter given, which consent Congress is not obliged to give. But I pass that question for the present, and proceed to say that I am not prepared to admit that the article of the annexation of Texas is itself constitutional. I find no authority in the Constitution of the United States for the annexation of foreign countries by a resolution of Congress, and no power adequate to that purpose but the treaty-making power of the President and the Senate. Entertaining this view, I must insist that the constitutionality of the annexation of Texas itself shall be cleared up before I can agree to the admission of any new states to be formed within Texas.

Mr. Foote. Did not I hear the senator observe that he would admit California, whether slavery was or was not precluded from these territories?

Mr. Seward. I said I would have voted for the admission of California even as a slave state, under the extraordinary circumstances which I have before distinctly described. I say that now; but I say also, that before I would agree to admit any more states from Texas, the circumstances which render such an act necessary must be shown, and must be such as to determine my obligation to do so; and that is precisely what I insist cannot be settled now. It must be left for those to whom the responsibility will belong.

Mr. President, I understand, and I am happy in understanding, that I agree with the honorable senator from Massachusetts, that there is no obligation upon Congress to admit four new slave states out of Texas, but that Congress has reserved her right to say whether those states shall be formed and admitted or not. I

shall rely on that reservation. I shall vote to admit no more slave states, unless under circumstances absolutely compulsory—and no such case is now foreseen.

Mr. Webster. What I said was, that if the states hereafter to be made out of Texas choose to come in as slave states, they have a right so to do.

Mr. Seward. My position is, that they have not a right to come in at all, if Congress rejects their institutions. The subdivision of Texas is a matter optional with both parties, Texas and the United States.

Mr. Webster. Does the honorable senator mean to say that Congress can hereafter decide whether they shall be slave or free states?

Mr. Seward. I mean to say that Congress can hereafter decide whether any states, slave or free, can be framed out of Texas. If they should never be framed out of Texas, they never could be admitted.

Another objection arises out of the principle on which the demand for compromise rests. That principle assumes a classification of the states as northern and southern states, as it is expressed by the honorable senator from South Carolina, [Mr. Calhoun] but into slave states and free states, as more directly expressed by the honorable senator from Georgia, [Mr. Berrien.] The argument is, that the states are severally equal, and that these two classes were equal at the first, and that the Constitution was founded on that equilibrium; that the states being equal, and the classes of the states being equal in rights, they are to be regarded as constituting an association in which each state, and each of these classes of states, respectively, contribute in due proportions; that the new territories are a common acquisition, and the people of these several states and classes of states, have an equal right to participate in them, respectively; that the right of the people of the slave states to emigrate to the territories with their slaves as property is necessary to afford such a participation on their part, inasmuch as the people of the free states emigrate into the same territories with their property. And the argument deduces from this right the principle that, if Congress exclude slavery from any part of this new domain, it would be only just to set off a portion of the domain—some say south 36° 30′, others south of 34°—

which should be regarded at least as free to slavery, and to be organized into slave states.

Argument ingenious and subtle, declamation earnest and bold, and persuasion gentle and winning as the voice of the turtle dove when it is heard in the land, all alike and all together have failed to convince me of the soundness of this principle of the proposed compromise, or of any one of the propositions on which it is attempted to be established.

How is the original equality of the states proved? It rests on a syllogism of Vattel, as follows: All men are equal by the law of nature and of nations. But states are only lawful aggregations of individual men, who severally are equal. Therefore, states are equal in natural rights. All this is just and sound. But assuming the same premises, to wit, that all men are equal by the law of nature and of nations, the right of property in slaves falls to the ground; for one who is equal to another cannot be the owner or property of that other. But you answer, that the Constitution recognizes property in slaves. It would be sufficient, then, to reply, that this constitutional recognition must be void, because it is repugnant to the law of nature and of nations. But I deny that the Constitution recognizes property in man. I submit, on the other hand, most respectfully, that the Constitution not merely does not affirm that principle, but, on the contrary, altogether excludes it.

The Constitution does not *expressly* affirm anything on the subject; all that it contains is two incidental allusions to slaves. These are, first, in the provision establishing a ratio of representation and taxation; and, secondly, in the provision relating to fugitives from labor. In both cases, the Constitution designedly mentions slaves, not as slaves, much less as chattels, but as *persons*. That this recognition of them as persons was designed is historically known, and I think was never denied. I give only two of the manifold proofs. First, JOHN JAY, in the *Federalist*, says:

"Let the case of the slaves be considered, as it is in truth, a peculiar one. Let the compromising expedient of the Constitution be mutually adopted which regards them as *inhabitants*, but as debased below the equal level of free inhabitants, which regards the slave as divested of two-fifths of the man."

Yes, sir, of two-fifths, but of only two-fifths; leaving still three-fifths; leaving the slave still an *inhabitant*, a person, a living, breathing, moving, reasoning, immortal man.

The other proof is from the debates in the convention. It is brief, and I think instructive:

"AUGUST 28, 1787.

"Mr. BUTLER and Mr. PINCKNEY moved to require fugitive slaves and servants to be delivered up like convicts.

"Mr. WILSON. This would oblige the executive of the state to do it at public expense.

"Mr. SHERMAN saw no more propriety in the public seizing and surrendering a slave or a servant than a horse.

"Mr. BUTLER withdrew his proposition, in order that some particular provision might be made, apart from this article."

AUGUST 29, 1787.

"Mr. BUTLER moved to insert after article 15: 'If any person bound to service or labor in any of the United States shall escape into another state, he or she shall not be discharged from such service or labor in consequence of any regulation subsisting in the state to which they escape, but shall be delivered up to the person justly claiming their service or labor.'"

"After the engrossment, September 15, page 550, article 4, section 2, the third paragraph, the term 'legally' was struck out, and the words 'under the laws thereof' inserted after the word 'state,' in compliance with the wishes of some who thought the term 'legal' equivocal, and favoring the idea that slavery was legal in a *moral view*."—*Madison Debates, pp.* 487, 492.

I deem it established, then, that the Constitution does not recognize property in man, but leaves that question, as between the states, to the law of nature and of nations. That law, as expounded by Vattel, is founded on the reason of things. When God had created the earth, with its wonderful adaptations, He gave dominion over it to man, absolute human dominion. The title of that dominion, thus bestowed, would have been incomplete, if the lord of all terrestrial things could himself have been the property of his fellow-man.

The right to *have* a slave implies the right in some one to *make* the slave; that right must be equal and mutual, and this would resolve society into a state of perpetual war. But if we grant the original equality of the states, and grant also the constitutional recognition of slaves as property, still the argument we are considering fails. Because the states are not parties to the Constitution as states; it is the Constitution of the people of the United States.

But even if the states continue under the Constitution as states, they nevertheless surrendered their equality as states, and submitted themselves to the sway of the numerical majority, with qualifications or checks; first, of the representation of three-fifths of slaves in the ratio of representation and taxation; and, secondly, of the equal representation of states in the Senate.

The proposition of an established classification of states as *slave*

states and *free states*, as insisted on by some, and into *northern* and *southern*, as maintained by others, seems to me purely imaginary, and of course the supposed equilibrium of those classes a mere conceit. This must be so, because, when the Constitution was adopted, twelve of the thirteen states were slave states, and so there was no equilibrium. And so as to the classification of states as northern states and southern states. It is the maintenance of slavery by law in a state, not parallels of latitude, that makes it a southern state; and the absence of this, that makes it a northern state. And so all the states, save one, were southern states, and there was no equilibrium. But the Constitution was made not only for southern and northern states, but for states neither northern nor southern, namely, the western states, their coming in being foreseen and provided for.

It needs little argument to show that the idea of a joint stock association, or a copartnership, as applicable even by its analogies to the United States, is erroneous, with all the consequences fancifully deduced from it. The United States are a political state, or organized society, whose end is government, for the security, welfare, and happiness of all who live under its protection. The theory I am combating reduces the objects of government to the mere spoils of conquest. Contrary to a theory so debasing, the preamble of the Constitution not only asserts the sovereignty to be, not in the states, but in the people, but also promulgates the objects of the Constitution:

"We, the people of the United States, in order to form a *more perfect union*, establish *justice*, insure *domestic tranquillity*, provide for the *common defence*, promote the GENERAL WELFARE, and secure the *blessings of liberty*, do ordain and establish this Constitution."

Objects sublime and benevolent! They exclude the very idea of conquests, to be either divided among states or even enjoyed by them, for the purpose of securing, not the blessings of liberty, but the evils of slavery. There is a novelty in the principle of the proposed compromise which condemns it. Simultaneously with the establishment of the Constitution, Virginia ceded to the United States her domain, which then extended to the Mississippi, and was even claimed to extend to the Pacific ocean. Congress accepted it, and unanimously devoted the domain to freedom, in the language from which the ordinance now so severely condemned was borrowed. Five states have already been organized on this

domain, from all of which, in pursuance of that ordinance, slavery is excluded. How did it happen that this theory of the equality of states, of the classification of states, of the equilibrium of states, of the title of the states to common enjoyment of the domain, or to an equitable and just partition between them, was never promulgated, nor even dreamed of, by the slave states, when they unanimously consented to that ordinance?

There is another aspect of the principle of compromise which deserves consideration. It assumes that slavery, if not the only institution in a slave state, is at least a ruling institution, and that this characteristic is recognized by the Constitution. But *slavery* is only *one* of many institutions there. Freedom is equally an institution there. Slavery is only a temporary, accidental, partial, and incongruous one. Freedom, on the contrary, is a perpetual, organic, universal one, in harmony with the Constitution of the United States. The slaveholder himself stands under the protection of the latter, in common with all the free citizens of the state. But it is, moreover, an indispensable institution. You may separate slavery from South Carolina, and the state will still remain; but if you subvert freedom there, the state will cease to exist. But the principle of this compromise gives complete ascendency in the slave states, and in the Constitution of the United States, to the subordinate, accidental, and incongruous institution, over its paramount antagonist. To reduce this claim of slavery to an absurdity, it is only necessary to add that there are only two states in which slaves are a majority, and not one in which the slaveholders are not a very disproportionate minority.

But there is yet another aspect in which this principle must be examined. It regards the domain only as a possession, to be enjoyed either in common or by partition by the citizens of the old states. It is true, indeed, that the national domain is ours. It is true it was acquired by the valor and with the wealth of the whole nation. But we hold, nevertheless, no arbitrary power over it. We hold no arbitrary authority over anything, whether acquired lawfully or seized by usurpation. The Constitution regulates our stewardship; the Constitution devotes the domain to union, to justice, to defence, to welfare, and to liberty.

But there is a higher law than the Constitution, which regulates our authority over the domain, and devotes it to the same noble purposes. The territory is a part, no inconsiderable part, of the

common heritage of mankind, bestowed upon them by the Creator of the universe. We are his stewards, and must so discharge our trust as to secure in the highest attainable degree their happiness. How momentous that trust is, we may learn from the instructions of the founder of modern philosophy:

"No man," says Bacon, "can by care-taking, as the Scripture saith, add a cubit to his stature in this little model of a man's body; but, in the great frame of kingdoms and commonwealths, it is in the power of princes or estates to add amplitude and greatness to their kingdoms. For, by introducing such ordinances, constitutions, and customs, as are wise, they may sow greatness to their posterity and successors. But these things are commonly not observed, but left to take their chance."

This is a state, and we are deliberating for it, just as our fathers deliberated in establishing the institutions we enjoy. Whatever superiority there is in our condition and hopes over those of any other "kingdom" or "estate," is due to the fortunate circumstance that our ancestors did not leave things to "take their chance," but that they "added amplitude and greatness" to our commonwealth "by introducing such ordinances, constitutions, and customs, as were wise." We in our turn have succeeded to the same responsibilities, and we cannot approach the duty before us wisely or justly, except we raise ourselves to the great consideration of how we can most certainly "sow greatness to our posterity and successors."

And now the simple, bold, and even awful question which presents itself to us is this: Shall we, who are founding institutions, social and political, for countless millions; shall we, who know by experience the wise and the just, and are free to choose them, and to reject the erroneous and unjust; shall we establish human bondage, or permit it by our sufferance to be established? Sir, our forefathers would not have hesitated an hour. They found slavery existing here, and they left it only because they could not remove it. There is not only no free state which would now establish it, but there is no slave state, which, if it had had the free alternative as we now have, would have founded slavery. Indeed, our revolutionary predecessors had precisely the same question before them in establishing an organic law under which the states of Ohio, Indiana, Michigan, Illinois, and Wisconsin, have since come into the Union, and they solemnly repudiated and excluded slavery from those states forever. I confess that the most alarming evidence of our degeneracy which has yet been given is found in the fact that we even debate such a question.

Sir, there is no Christian nation, thus free to choose as we are, which would establish slavery. I speak on due consideration, because Britain, France, and Mexico, have abolished slavery, and all other European states are preparing to abolish it as speedily as they can. We cannot establish slavery, because there are certain elements of the security, welfare, and greatness of nations, which we all admit, or ought to admit, and recognize as essential; and these are the security of natural rights, the diffusion of knowledge, and the freedom of industry. Slavery is incompatible with all of these; and, just in proportion to the extent that it prevails and controls in any republican state, just to that extent it subverts the principle of democracy, and converts the state into an aristocracy or a despotism. I will not offend sensibilities by drawing my proofs from the slave states existing among ourselves; but I will draw them from the greatest of the European slave states.

The population of Russia in Europe, in 1844, was	54,251,000
Of these were serfs - - - - - - -	53,500,000
The residue nobles, clergy, and merchants, &c. -	751,000

The Imperial government abandons the control over the fifty-three and a half millions to their owners; and these owners, included in the 751,000, are thus a privileged class, or aristocracy. If ever the government interferes at all with the serfs, who are the only laboring population, it is by edicts designed to abridge their opportunities of education, and thus continue their debasement. What was the origin of this system? Conquest, in which the captivity of the conquered was made perpetual and hereditary. This, it seems to me, is identical with American slavery, only at one and the same time exaggerated by the greater disproportion between the privileged classes and the slaves in their respective numbers, and yet relieved of the unhappiest feature of American slavery, the distinction of castes. What but this renders Russia at once the most arbitrary despotism and the most barbarous state in Europe? And what is its effect, but industry comparatively profitless, and sedition, not occasional and partial, but chronic and pervading the empire. I speak of slavery not in the language of fancy, but in the language of philosophy. Montesquieu remarked upon the proposition to introduce slavery into France, that the demand for slavery was the demand of luxury and corruption,

and not the demand of patriotism. Of all slavery, African slavery is the worst, for it combines practically the features of what is distinguished as real slavery or serfdom with the personal slavery known in the oriental world. Its domestic features lead to vice, while its political features render it injurious and dangerous to the state.

I cannot stop to debate long with those who maintain that slavery is itself practically economical and humane. I might be content with saying that there are some axioms in political science that a statesman or a founder of states may adopt, especially in the Congress of the United States, and that among those axioms are these: That all men are created equal, and have inalienable rights of life, liberty, and the choice of pursuits of happiness; that knowledge promotes virtue, and righteousness exalteth a nation; that freedom is preferable to slavery, and that democratic governments, where they can be maintained by acquiescence, without force, are preferable to institutions exercising arbitrary and irresponsible power.

It remains only to remark that our own experience has proved the dangerous influence and tendency of slavery. All our apprehensions of dangers, present and future, begin and end with slavery. If slavery, limited as it yet is, now threatens to subvert the Constitution, how can we, as wise and prudent statesmen, enlarge its boundaries and increase its influence, and thus increase already impending dangers? Whether, then, I regard merely the welfare of the future inhabitants of the new territories, or the security and welfare of the whole people of the United States, or the welfare of the whole family of mankind, I cannot consent to introduce slavery into any part of this continent which is now exempt from what seems to me so great an evil. These are my reasons for declining to compromise the question relating to slavery as a condition of the admission of California.

In acting upon an occasion so grave as this, a respectful consideration is due to the arguments, founded on extraneous considerations, of senators who commend a course different from that which I have preferred. The first of these arguments is, that Congress has no power to legislate on the subject of slavery within the territories.

Sir, Congress *may* admit new states; and since Congress may admit, it follows that Congress may *reject* new states. The discretion

of Congress in admitting is absolute, except that, when admitted, the state must be a republican state, and must be a STATE: that is, it shall have the constitutional form and powers of a state. But the greater includes the less, and therefore Congress may impose *conditions* of admission not inconsistent with those fundamental powers and forms. Boundaries are such. The reservation of the public domain is such. The right to divide is such. The ordinance excluding slavery is such a condition. The organization of a territory is ancillary or preliminary; it is the inchoate, the *initiative* act of admission, and is performed under the clause granting the powers necessary to execute the express powers of the Constitution.

This power comes from the treaty-making power also, and I think it well traced to the power to make needful rules and regulations concerning the public domain. But this question is not a material one now; the power is here to be exercised. The question now is, How is it to be exercised? not whether we shall exercise it at all, however derived. And the right to regulate property, to administer justice in regard to *property, is assumed* in every territorial charter. If we have the power to legislate concerning property, we have the power to legislate concerning personal rights. Freedom is a *personal* right; and Congress, being the supreme legislature, has the same right in regard to property and personal rights in territories that the states would have if organized.

The next of this class of arguments is, that the inhibition of slavery in the new territories is *unnecessary;* and when I come to this question, I encounter the loss of many who lead in favor of admitting California. I had hoped, some time ago, that upon the vastly important question of inhibiting slavery in the new territories, we should have had the aid especially of the distinguished senator from Missouri, [Mr. BENTON,] and when he announced his opposition to that measure I was induced to exclaim—

> Cur in theatrum, Cato severe, venisti?
> An ideo, tantum, veneras ut exires?

But, sir, I have no right to complain. The senator is crowning a life of eminent public service by a heroic and magnanimous act in bringing California into the Union. Grateful to him for this, I leave it to himself to determine how far considerations of human freedom shall govern the course which he thinks proper to pursue.

The argument is, that the *Proviso is unnecessary*. I answer, then there can be no error in insisting upon it. But why is it unnecessary? It is said, *first*, by reason of *climate*. I answer, if this be so, why do not the representatives of the slave states concede the Proviso? They deny that the climate prevents the introduction of slavery. Then I will leave nothing to a contingency. But, in truth, I think the weight of argument is against the proposition. Is there any climate where slavery has not existed? It has prevailed all over Europe, from sunny Italy to bleak England, and is existing now, stronger than in any other land, in ice-bound Russia. But it will be replied, that this is not African slavery. I rejoin, that only makes the case the stronger. If this vigorous Saxon race of ours was reduced to slavery while it retained the courage of semi-barbarism in its own high northern latitude, what security does climate afford against the transplantation of the more gentle, more docile, and already enslaved and debased African to the genial climate of New Mexico and Eastern California?

Sir, there is no climate uncongenial to slavery. It is true it is less productive than free labor in many northern countries. But so it is less productive than free white labor in even tropical climates. Labor is in quick demand in all new countries. Slave labor is cheaper than free labor, and it would go first into new regions; and wherever it goes it brings labor into dishonor, and therefore free white labor avoids competition with it. Sir, I might rely on climate if I had not been born in a land where slavery existed—and this land was all of it north of the fortieth parallel of latitude; and if I did not know the struggle it has cost, and which is yet going on, to get complete relief from the institution and its baleful consequences. I desire to propound this question to those who are now in favor of dispensing with the Wilmot Proviso: Was the ordinance of 1787 necessary or not? Necessary, we all agree. It has received too many elaborate eulogiums to be now decried as an idle and superfluous thing. And yet that ordinance extended the inhibition of slavery from the thirty-seventh to the fortieth parallel of north latitude. And now we are told that the inhibition named is unnecessary anywhere north of 36° 30′! We are told that we may rely upon the laws of God, which prohibit slave labor north of that line, and that it is absurd to re-enact the laws of God. Sir, there is no human enactment

which is just that is not a re-enactment of the law of God. The Constitution of the United States and the constitutions of all the states are full of such re-enactments. Wherever I find a law of God or a law of nature disregarded, or in danger of being disregarded, there I shall vote to re-affirm it, with all the sanction of the civil authority. But I find no authority for the position that climate prevents slavery anywhere. It is the indolence of mankind in any climate, and not any natural necessity, that introduces slavery in any climate.

I shall dwell only very briefly on the argument derived from the Mexican laws. The proposition, that those laws must remain in force until altered by laws of our own, is satisfactory; and so is the proposition that those Mexican laws abolished and continue to prohibit slavery. And still I deem an enactment by ourselves wise, and even necessary. Both of the propositions I have stated are denied with just as much confidence by southern statesmen and jurists as they are affirmed by those of the free states. The population of the new territories is rapidly becoming an American one, to whom the Mexican code will seem a foreign one, entitled to little deference or obedience.

Slavery has never obtained anywhere by express legislative authority, but always by trampling down laws higher than any mere municipal laws—the laws of nature and of nations. There can be no oppression in superadding the sanction of Congress to the authority which is so weak and so vehemently questioned. And there is some possibility, if not probability, that the institution may obtain a foothold surreptitiously, if it shall not be absolutely forbidden by our own authority.

What is insisted upon, therefore, is not a mere abstraction or a mere sentiment, as is contended by those who waive the proviso. And what is conclusive on the subject is, that it is conceded on all hands that the effect of insisting on it is to prevent the intrusion of slavery into the region to which it is proposed to apply it.

It is insisted that the diffusion of slavery will not increase its evils. The argument seems to me merely specious, and quite unsound. I desire to propose one or two questions in reply to it. Is slavery stronger or weaker in these United States, from its diffusion into Missouri? Is slavery weaker or stronger in these United States, from the exclusion of it from the northwest territory? The answers to these questions will settle the whole controversy.

And this brings me to the great and all-absorbing argument that the Union is in danger of being dissolved, and that it can only be saved by compromise. I do not know what I would not do to save the Union; and therefore I shall bestow upon this subject a very deliberate consideration.

I do not overlook the fact that the entire delegation from the slave states, although they differ in regard to the details of the compromise proposed, and perhaps in regard to the exact circumstances of the crisis, seem to concur in this momentous warning. Nor do I doubt at all the patriotic devotion to the Union which is expressed by those from whom this warning proceeds. And yet, sir, although such warnings have been uttered with impassioned solemnity in my hearing every day for near three months, my confidence in the Union remains unshaken. I think they are to be received with no inconsiderable distrust, because they are uttered under the influence of a controlling interest to be secured, a paramount object to be gained; and that is an equilibrium of power in the republic. I think they are to be received with even more distrust, because, with the most profound respect, they are uttered under an obviously high excitement. Nor is that excitement an unnatural one. It is a law of our nature that the passions disturb the reason and judgment just in proportion to the importance of the occasion, and the consequent necessity for calmness and candor. I think they are to be distrusted, because there is a diversity of opinion in regard to the nature and operation of this excitement. The senators from some states say that it has brought all parties in their own region into unanimity. The honorable senator from Kentucky [Mr. Clay] says that the danger lies in the violence of party spirit, and refers us for proof to the difficulties which attended the organization of the house of representatives.

Sir, in my humble judgment, it is not the fierce conflict of parties that we are seeing and hearing; but, on the contrary, it is the agony of distracted parties—a convulsion resulting from the too narrow foundations of both the great parties, and of all parties—foundations laid in compromises of natural justice and of human liberty. A question, a moral question, transcending the too narrow creeds of parties, has arisen; the public conscience expands with it, and the green withes of party associations give way and break, and fall off from it. No, sir; it is not the state that is dying of the fever of party spirit. It is merely a paralysis of parties, pre-

monitory however of their restoration, with new elements of health and vigor to be imbibed from that spirit of the age which is so justly called Progress.

Nor is the evil that of unlicensed, irregular, and turbulent faction. We are told that twenty legislatures are in session, burning like furnaces, heating and inflaming the popular passions. But these twenty legislatures are constitutional furnaces. They are performing their customary functions, imparting healthful heat and vitality while within their constitutional jurisdiction. If they rage beyond its limits, the popular passions of this country are not at all, I think, in danger of being inflamed to excess. No, sir; let none of these fires be extinguished. Forever let them burn and blaze. They are neither ominous meteors nor baleful comets, but planets; and bright and intense as their heat may be, it is their native temperature, and they must still obey the law which, by attraction toward this solar centre, holds them in their spheres.

I see nothing of that conflict between the southern and northern states, or between their representative bodies, which seems to be on all sides of me assumed. Not a word of menace, not a word of anger, not an intemperate word, has been uttered in the northern legislatures. They firmly but calmly assert their convictions; but at the same time they assert their unqualified consent to submit to the common arbiter, and for weal or wo abide the fortunes of the Union.

What if there be less of moderation in the legislatures of the south? It only indicates on which side the balance is inclining, and that the decision of the momentous question is near at hand. I agree with those who say that there can be no peaceful dissolution—no dissolution of the Union by the secession of states; but that disunion, dissolution, happen when it may, will and must be revolution. I discover no omens of revolution. The predictions of the political astrologers do not agree as to the time or manner in which it is to occur. According to the authority of the honorable senator from Alabama, [Mr. Clemens,] the event has already happened, and the Union is now in ruins. According the honorable and distinguished senator from South Carolina, [Mr. Calhoun,] it is not to be immediate, but to be developed by time.

What are the omens to which our attention is directed? I see

nothing but a broad difference of opinion here, and the excitement consequent upon it.

I have observed that revolutions which begin in the palace seldom go beyond the palace walls, and they affect only the dynasty which reigns there. This revolution, if I understand it, began in this Senate chamber a year ago, when the representatives from the southern states assembled here and addressed their constituents on what were called the aggressions of the northern states. No revolution was designed at that time, and all that has happened since is the return to Congress of legislative resolutions, which seem to me to be only conventional responses to the address which emanated from the capitol.

Sir, in any condition of society there can be no revolution without a cause, an adequate cause. What cause exists here? We are admitting a new state; but there is nothing new in that: we have already admitted seventeen before. But it is said that the slave states are in danger of losing political power by the admission of the new state. Well, sir, is there anything new in that? The slave states have always been losing political power, and they always will be while they have any to lose. At first, twelve of the thirteen states were slave states; now only fifteen out of the thirty are slaves states. Moreover, the change is constitutionally made, and the government was constructed so as to permit changes of the balance of power, in obedience to changes of the forces of the body politic. Danton used to say, "It's all well while the people cry Danton and Robespierre; but wo for me if ever the people learn to say, Robespierre and Danton!" That is all of it, sir. The people have been accustomed to say, "the South and the North;" they are only beginning now to say, "the North and the South."

Sir, those who would alarm us with the terrors of revolution have not well considered the structure of this government, and the organization of its forces. It is a democracy of property and persons, with a fair approximation towards universal education, and operating by means of universal suffrage. The constituent members of this democracy are the only persons who could subvert it; and they are not the citizens of a metropolis like Paris, or of a region subjected to the influences of a metropolis like France; but they are husbandmen, dispersed over this broad land, on the mountain and on the plain, and on the prairie, from the

ocean to the Rocky Mountains, and from the great lakes to the gulf; and this people are now, while we are discussing their imaginary danger, at peace and in their happy homes, as unconcerned and uninformed of their peril as they are of events occurring in the moon. Nor have the alarmists made due allowance in their calculations for the influence of conservative reaction, strong in any government, and irresistible in a rural republic, operating by universal suffrage. That principle of reaction is due to the force of the habits of acquiescence and loyalty among the people. No man better understood this principle than MACHIAVELLI, who has told us, in regard to factions, that "no safe reliance can be placed in the force of nature and the bravery of words, except it be corroborated by custom." Do the alarmists remember that this government has stood sixty years already without exacting one drop of blood?—that this government has stood sixty years, and yet treason is an obsolete crime? That day, I trust, is far off when the fountains of popular contentment shall be broken up; but, whenever it shall come, it will bring forth a higher illustration than has ever yet been given of the excellence of the democratic system; for then it will be seen how calmly, how firmly, how nobly, a great people can act in preserving their Constitution; whom "love of country moveth, example teacheth, company comforteth, emulation quickeneth, and glory exalteth."

When the founders of the new republic of the south come to draw over the face of this empire, along or between its parallels of latitude or longitude, their ominous lines of dismemberment, soon to be broadly and deeply shaded with fraternal blood, they may come to the discovery then, if not before, that the natural and even the political connections of the region embraced forbid such a partition; that its possible divisions are not northern and southern at all, but eastern and western, Atlantic and Pacific; and that nature and commerce have allied indissolubly for weal and wo the seceders and those from whom they are to be separated; that while they would rush into a civil war to restore an imaginary equilibrium between the northern states and the southern states, a new equilibrium has taken its place, in which all those states are on the one side, and the boundless west is on the other.

Sir, when the founders of the republic of the south come to draw those fearful lines, they will indicate what portions of the

continent are to be broken off from their connection with the Atlantic, through the St. Lawrence, the Hudson, the Delaware, the Potomac, and the Mississippi; what portion of this people are to be denied the use of the lakes, the railroads, and the canals, now constituting common and customary avenues of travel, trade, and social intercourse; what families and kindred are to be separated, and converted into enemies; and what states are to be the scenes of perpetual border warfare, aggravated by interminable horrors of servile insurrection? When those portentous lines shall be drawn, they will disclose what portion of this people is to retain the army and the navy, and the flag of so many victories; and, on the other hand, what portion of the people is to be subjected to new and onerous imposts, direct taxes, and forced loans, and conscriptions, to maintain an opposing army, an opposing navy, and the new and hateful banner of sedition. Then the projectors of the new republic of the south will meet the question—and they may well prepare now to answer it—What is all this for? What intolerable wrong, what unfraternal injustice, have rendered these calamities unavoidable? What gain will this unnatural revolution bring to us? The answer will be: All this is done to secure the institution of African slavery.

And then, if not before, the question will be discussed, What is this institution of slavery, that it should cause these unparalleled sacrifices and these disastrous afflictions? And this will be the answer: When the Spaniards, few in number, discovered the western Indies and adjacent continental America, they needed labor to draw forth from its virgin stores some speedy return to the cupidity of the court and the bankers of Madrid. They enslaved the indolent, inoffensive, and confiding natives, who perished by thousands, and even by millions, under that new and unnatural bondage. A humane ecclesiastic advised the substitution of Africans reduced to captivity in their native wars, and a pious princess adopted the suggestion, with a dispensation from the head of the church, granted on the ground of the prescriptive right of the christian to enslave the heathen, to effect his conversion. The colonists of North America, innocent in their unconsciousness of wrong, encouraged the slave traffic, and thus the labor of subduing their territory devolved chiefly upon the African race. A happy conjuncture brought on an awakening of the conscience of mankind to the injustice of slavery, simultaneously with the independence

of the colonies. Massachusetts, Connecticut, Rhode Island, New Hampshire, Vermont, New York, New Jersey, and Pennsylvania, welcomed and embraced the spirit of universal emancipation. Renouncing luxury, they secured influence and empire. But the states of the south, misled by a new and profitable culture, elected to maintain and perpetuate slavery; and thus, choosing luxury, they lost power and empire.

When this answer shall be given, it will appear that the question of dissolving the Union is a complex question; that it embraces the fearful issue whether the Union shall stand, and slavery, under the steady, peaceful action of moral, social, and political causes, be removed by gradual, voluntary effort, and with compensation, or whether the Union shall be dissolved, and civil wars ensue, bringing on violent but complete and immediate emancipation. We are now arrived at that stage of our national progress when that crisis can be foreseen, when we must foresee it. It is directly before us. Its shadow is upon us. It darkens the legislative halls, the temples of worship, and the home and the hearth. Every question, political, civil, or ecclesiastical, however foreign to the subject of slavery, brings up slavery as an incident, and the incident supplants the principal question. We hear of nothing but slavery, and we can talk of nothing but slavery. And now, it seems to me that all our difficulties, embarrassments, and dangers, arise, not out of unlawful perversions of the question of slavery, as some suppose, but from the want of moral courage to meet this question of emancipation as we ought. Consequently, we hear on one side demands—absurd, indeed, but yet unceasing—for an immediate and unconditional abolition of slavery—as if any power, except the people of the slave states, could abolish it, and as if they could be moved to abolish it by merely sounding the trumpet loudly and proclaiming emancipation, while the institution is interwoven with all their social and political interests, constitutions, and customs.

On the other hand, our statesmen say that "slavery has always existed, and, for aught they know or can do, it always must exist. God permitted it, and he alone can indicate the way to remove it." As if the Supreme Creator, after giving us the instructions of his providence and revelation for the illumination of our minds and consciences, did not leave us in all human transactions, with due

invocations of his Holy Spirit, to seek out his will and execute it for ourselves.

Here, then, is the point of my separation from both of these parties. I feel assured that slavery must give way, and will give way, to the salutary instructions of economy, and to the ripening influences of humanity; that emancipation is inevitable, and is near; that it may be hastened or hindered; and that whether it shall be peaceful or violent, depends upon the question whether it be hastened or hindered; that all measures which fortify slavery or extend it, tend to the consummation of violence; all that check its extension and abate its strength, tend to its peaceful extirpation. But I will adopt none but lawful, constitutional, and peaceful means, to secure even that end; and none such can I or will I forego. Nor do I know any important or responsible political body that proposes to do more than this. No free state claims to extend its legislation into a slave state. None claims that Congress shall usurp power to abolish slavery in the slave states. None claims that any violent, unconstitutional, or unlawful measure shall be embraced. And, on the other hand, if we offer no scheme or plan for the adoption of the slave states, with the assent and co-operation of Congress, it is only because the slave states are unwilling as yet to receive such suggestions, or even to entertain the question of emancipation in any form.

But, sir, I will take this occasion to say that, while I cannot agree with the honorable senator from Massachusetts in proposing to devote eighty millions of dollars to remove the free colored population from the slave states, and thus, as it appears to me, fortify slavery, there is no reasonable limit to which I am not willing to go in applying the national treasures to effect the peaceful, voluntary removal of slavery itself.

I have thus endeavored to show that there is not now, and there is not likely to occur any adequate cause for revolution in regard to slavery. But you reply that, nevertheless, you must have guaranties; and the first one is for the surrender of fugitives from labor. That guaranty you cannot have, as I have already shown, because you cannot roll back the tide of social progress. You must be content with what you have. If you wage war against us, you can, at most, only conquer us, and then all you can get will be a treaty, and that you have already.

But you insist on a guaranty against the abolition of slavery in

the District of Columbia, or war. Well, when you shall have declared war against us, what shall hinder us from immediately decreeing that slavery shall cease within the national capital?

You say that you will not submit to the exclusion of slaves from the new territories. What will you gain by resistance? Liberty follows the sword, although her sway is one of peace and beneficence. Can you propagate slavery then by the sword?

You insist that you cannot submit to the freedom with which slavery is discussed in the free states. Will war—a war for slavery—arrest or even moderate that discussion? No, sir; that discussion will not cease; war will only inflame it to a greater height. It is a part of the eternal conflict between truth and error—between mind and physical force—the conflict of man against the obstacles which oppose his way to an ultimate and glorious destiny. It will go on until you shall terminate it in the only way in which any state or nation has ever terminated it—by yielding to it—yielding in your own time, and in your own manner, indeed, but nevertheless yielding to the progress of emancipation. You will do this, sooner or later, whatever may be your opinion now; because nations which were prudent and humane, and wise as you are, have done so already.

Sir, the slave states have no reason to fear that this inevitable change will go too far or too fast for their safety or welfare. It cannot well go too fast or too far, if the only alternative is a war of races.

But it cannot go too fast. Slavery has a reliable and accommodating ally in a party in the free states, which, though it claims to be, and doubtless is in many respects, a party of progress, finds its sole security for its political power in the support and aid of slavery in the slave states. Of course, I do not include in that party those who are now co-operating in maintaining the cause of freedom against slavery. I am not of that party of progress which in the north thus lends its support to slavery. But it is only just and candid that I should bear witness to its fidelity to the interests of slavery.

Slavery has, moreover, a more natural alliance with the aristocracy of the north and with the aristocracy of Europe. So long as slavery shall possess the cotton-fields, the sugar-fields, and the rice-fields of the world, so long will commerce and capital yield it toleration and sympathy. Emancipation is a democratic revolu-

tion. It is capital that arrests all democratic revolutions. It was capital that, so recently, in a single year, rolled back the tide of revolution from the base of the Carpathian mountains, across the Danube and the Rhine, into the streets of Paris. It is capital that is rapidly rolling back the throne of Napoleon into the chambers of the Tuilleries.

Slavery has a guaranty still stronger than these in the prejudices of caste and color, which induce even large majorities in all the free states to regard sympathy with the slave as an act of unmanly humiliation and self-abasement, although philosophy meekly expresses her distrust of the asserted natural superiority of the white race, and confidently denies that such a superiority, if justly claimed, could give a title to oppression.

There remains one more guaranty—one that has seldom failed you, and will seldom fail you hereafter. New states cling in closer alliance than older ones to the federal power. The concentration of the slave power enables you for long periods to control the federal government with the aid of the new states. I do not know the sentiments of the representatives of California; but, my word for it, if they should be admitted on this floor to-day, against your most obstinate opposition, they would, on all questions really affecting your interests, be found at your side.

With these alliances to break the force of emancipation, there will be no disunion and no secession. I do not say that there may not be disturbance, though I do not apprehend even that. Absolute regularity and order in administration have not yet been established in any government, and unbroken popular tranquillity has not yet been attained in even the most advanced condition of human society. The machinery of our system is necessarily complex. A pivot may drop out here, a lever may be displaced there, a wheel may fall out of gearing elsewhere, but the machinery will soon recover its regularity, and move on just as before, with even better adaptation and adjustment to overcome new obstructions.

There are many well-disposed persons who are alarmed at the occurrence of any such disturbance. The failure of a legislative body to organize is to their apprehension a fearful omen, and an extra-constitutional assemblage to consult upon public affairs is with them cause for desperation. Even senators speak of the Union as if it existed only by consent, and, as it seems to be implied, by the assent of the legislatures of the states. On the contrary, the

union was not founded in voluntary choice, nor does it exist by voluntary consent.

A union was proposed to the colonies by Franklin and others, in 1754; but such was their aversion to an abridgment of their own importance, respectively, that it was rejected even under the pressure of a disastrous invasion by France.

A union of choice was proposed to the colonies in 1775; but so strong was their opposition, that they went through the war of independence without having established more than a mere council of consultation.

But with independence came enlarged interests of agriculture—absolutely new interests of manufactures—interests of commerce, of fisheries, of navigation, of a common domain, of common debts, of common revenues and taxation, of the administration of justice, of public defence, of public honor; in short, interests of common nationality and sovereignty—interests which at last compelled the adoption of a more perfect union—a National Government.

The genius, talents, and learning of Hamilton, of Jay, and of Madison, surpassing perhaps the intellectual power ever exerted before for the establishment of a government, combined with the serene but mighty influence of Washington, were only sufficient to secure the reluctant adoption of the Constitution that is now the object of all our affections and of the hopes of mankind. No wonder that the conflicts in which that Constitution was born, and the almost desponding solemnity of Washington, in his farewell address, impressed his countrymen and mankind with a profound distrust of its perpetuity! No wonder that while the murmurs of that day are yet ringing in our ears, we cherish that distrust, with pious reverence, as a national and patriotic sentiment!

But it is time to prevent the abuses of that sentiment. It is time to shake off that fear, for fear is always weakness. It is time to remember that government, even when it arises by chance or accident, and is administered capriciously and oppressively, is ever the strongest of all human institutions, surviving many social and ecclesiastical changes and convulsions; and that this Constitution of ours has all the inherent strength common to governments in general, and added to them has also the solidity and firmness derived from broader and deeper foundations in national justice, and a better civil adaptation to promote the welfare and happiness of mankind.

The Union, the creature of necessities, physical, moral, social, and political, endures by virtue of the same necessities; and these necessities are stronger than when it was produced—stronger by the greater amplitude of territory now covered by it—stronger by the sixfold increase of the society living under its beneficent protection—stronger by the augmentation ten thousand times of the fields, the workshops, the mines, and the ships, of that society; of its productions of the sea, of the plow, of the loom, and of the anvil, in their constant circle of internal and international exchange—stronger in the long rivers penetrating regions before unknown—stronger in all the artificial roads, canals, and other channels and avenues essential not only to trade but to defence—stronger in steam navigation, in steam locomotion on the land, and in telegraph communications, unknown when the Constitution was adopted—stronger in the freedom and in the growing empire of the seas—stronger in the element of national honor in all lands, and stronger than all in the now settled habits of veneration and affection for institutions so stupendous and so useful.

The Union, then, is, not because merely that men choose that it shall be, but because some government must exist here, and no other government than this can. If it could be dashed to atoms by the whirlwind, the lightning, or the earthquake, to-day, it would rise again in all its just and magnificent proportions to-morrow. This nation is a globe, still accumulating upon accumulation, not a dissolving sphere.

I have heard somewhat here, and almost for the first time in my life, of divided allegiance—of allegiance to the south and to the Union—of allegiance to states severally and to the Union. Sir, if sympathies with state emulation and pride of achievement could be allowed to raise up another sovereign to divide the allegiance of a citizen of the United States, I might recognize the claims of the state to which, by birth and gratitude, I belong—to the state of Hamilton and Jay, of Schuyler, of the Clintons, and of Fulton—the state which, with less than two hundred miles of natural navigation connected with the ocean, has, by her own enterprise, secured to herself the commerce of the continent, and is steadily advancing to the command of the commerce of the world. But for all this I know only one country and one sovereign—the United States of America and

the American People. And such as my allegiance is, is the loyalty of every other citizen of the United States. As I speak, he will speak when his time arrives. He knows no other country and no other sovereign. He has life, liberty, property, and precious affections, and hopes for himself and for his posterity, treasured up in the ark of the Union. He knows as well and feels as strongly as I do, that this government is his own government; that he is a part of it; that it was established for him, and that it is maintained by him; that it is the only truly wise, just, free, and equal government, that has ever existed; that no other government could be so wise, just, free, and equal; and that it is safer and more beneficent than any which time or change could bring into its place.

You may tell me, sir, that although all this may be true, yet the trial of faction has not yet been made. Sir, if the trial of faction has not been made, it has not been because faction has not always existed, and has not always menaced a trial, but because faction could find no fulcrum on which to place the lever to subvert the Union, as it can find no fulcrum now; and in this is my confidence. I would not rashly provoke the trial; but I will not suffer a fear, which I have not, to make me compromise one sentiment, one principle of truth or justice, to avert a danger that all experience teaches me is purely chimerical. Let, then, those who distrust the Union make compromises to save it. I shall not impeach their wisdom, as I certainly cannot their patriotism; but, indulging no such apprehensions myself, I shall vote for the admission of California directly, without conditions, without qualifications, and without compromise.

For the vindication of that vote, I look not to the verdict of the passing hour, disturbed as the public mind now is by conflicting interests and passions, but to that period, happily not far distant, when the vast regions over which we are now legislating shall have received their destined inhabitants.

While looking forward to that day, its countless generations seem to me to be rising up and passing in dim and shadowy review before us; and a voice comes forth from their serried ranks, saying: "Waste your treasures and your armies, if you will; raze your fortifications to the ground; sink your navies into the sea; transmit to us even a dishonored name, if you must; but the soil

you hold in trust for us—give it to us free. You found it free, and conquered it to extend a better and surer freedom over it. Whatever choice you have made for yourselves, let us have no partial freedom; let us all be free; let the reversion of your broad domain descend to us unincumbered, and free from the calamities and from the sorrows of human bondage."

FREEDOM IN THE NEW TERRITORIES:

THE COMPROMISE BILL.

JULY 2, 1850.

Mr. President: If an alien in our land should chance to enter here during these high debates, he would ask whether California was a stranger and an enemy; or an unbidden and unwelcome intruder; or a fugitive, powerless and portionless, and therefore importunate; or an oppressor and scourge of mankind, and therefore hateful and dangerous. We should be obliged to answer, No! California yielded to persuasion, rather than to conquest. She has renounced her lineage, language, and ancient loyalty. She has brought us to the banks of streams which flow over precious sands, and, at the base of mountains which yield massive gold, she delivers into our hand the key that unlocks the long-coveted treasures of the eastern world. California refuses only to let us buy and sell each other within her domain, so rich in all the elements of legitimate commerce. She invites us to forego an unjust, injurious, and inglorious dominion over a caste, and to extend the sway of peace, of arts, and of freedom, over nations beyond the seas, still slumbering under the mingled reign of barbarian superstition and unalleviated despotism. The very head and front of her offending hath this extent—no more.

The President of the United States recommends, nevertheless, that California shall be admitted *unconditionally*, while a committee of the Senate insist *on conditions*.

I prefer the President's suggestion; but not merely because it is his, although I honor his patriotism and confide fully in his wisdom. Nor do I prefer his suggestion out of disrespect to the statesmen by whom it is opposed. My veneration for them has

been abundantly manifested heretofore, and needs no display of protestations now. We are in a frame of things disjoint; and in the confusion resulting from a severance of parties and new conjunctions of statesmen, each of us is obliged to rely on the guidance of his own judgment and conscience.

I submit, sir, that the conditions are *unreasonable*, *injurious*, and *oppressive*, in regard to CALIFORNIA. So far, as they are found in the bill before us, they are, first, the establishment of a territorial government in New Mexico, silent concerning slavery; second, the establishment of a like government in Utah; third, a compromise of a border dispute between New Mexico and Texas. The garment of compromise, thus quilted of various fabrics with artistic skill, is ingeniously pieced out with collateral conditions in a report and two other bills concerning slavery in the District of Columbia, the recapture of fugitive slaves, and other national interests or pretensions of slavery.

It is not pretended that California needs aid from these conditions, nor that they can give it. California is taxed for superfluous power to draw the dependent measures into port, which otherwise would founder and be lost. This forced connection therefore hinders, and tends to defeat, the admission of California.

Why is California subjected to this embarrassment? Does she come without right? She has a treaty. Is that treaty denied or questioned? No, it is unanimously affirmed. Can California abide delay? No; her anomalous condition not merely appeals to our justice, but touches the very virtue of compassion within us. Why, then, should California be kept waiting, while we make a circuit throughout the entire orbit of slavery? California neither brought the states into confederation, nor constructed the Constitution. She neither planted slavery in the slave states, nor uprooted it in the free states. She is not found by the side of Texas invading New Mexico, nor allied with New Mexico in resisting Texas. She is guiltless equally of buying and of selling, of holding and emancipating, of reclaiming and of harboring slaves anywhere. She has neither vote nor speech here, nor elsewhere, where this angry strife can be composed. She has severed at a blow, and forever, the loose political connection—the only connection she ever had—with Utah and New Mexico. The slave states indeed insist on a right to colonize new territories with a caste. But all agree that the community in any such territory

may establish a constitution prohibiting caste. California, colonized, has done this already, and her maturity is not well questioned, although it has been as rapid and bewildering as the passage of a midsummer night's dream. There is, therefore, neither community nor connection, nor even congruity between the admission of California and the conditions demanded. It is binding Eros to Anteros—confiding youth to querulous and wrangling age—the struggling hind to ravening hounds.

We were told long ago that California would save time by yielding to this most unjust combination. We have seen the error of that hope. We are making the overland journey of seven thousand miles between the pillars of Hercules, when we might have crossed the Straits of Gibraltar, on a smooth sea, in six hours.

We were told that a minority in another part of the legislature could prevent the admission of California, and even bring the Government to a dead stand. But the Government must work in its own democratic and constitutional way, or must cease to work at all. No one or more of the states can assume the responsibility of arresting its operation by faction. "*Optimis auspiciis ea geri quæ pro reipublicæ salute gerentur, quæ contra rempublicam ferrentur contra auspicia ferri.*"

I submit, now, that the conditions demanded are equally *unreasonable*, *injurious*, and *oppressive*, in regard to the other parties affected by the combination, viz: Texas, New Mexico, Utah, and the District of Columbia.

Each of these parties ought to be regarded as asking only a just award; and Congress is to be deemed ready to make a just one, and no other. Such an award can be made only by bestowing a distinct and separate consideration on each claim. The same principle of dialetic philosophy which forbids multifariousness of issues and confusion of parties in the administration of justice, condemns incongruous combinations in legislation.

The bill before us seems adapted to enable senators to speak on one side, and to vote on the other; to comply with instructions, and to evade them; to vote for the line of 36° 30′, and to vote against it; to support the Wilmot proviso, and yet to defeat its application to the only territories open to its introduction. I solicit—if stronger language were courteous, I might demand—from the majority here a subdivision of the bill, to enable me to vote effectually for what I approve, without voting equally for what

my own judgment, concurring with instructions, condemns; and thus to place myself, where I should invite all others to place themselves, under exact and full responsibility to the states and to the people.

While I leave the interests of Texas in the care of her honorable and excellent senators, I must be allowed to think that their consent to this bill betrays a want of confidence in her claims or in the justice of Congress. A just claim ought not to need an unjust combination. Those who assume that Texas has a valid title to all of New Mexico east of the Rio Grande, as high as the 42d parallel, will necessarily regard that state as surrendering, for a pecuniary equivalent, an extensive region, effectually secured to slavery, to the equivocations of this compromise. Those, on the contrary, who regard the pretensions of Texas in New Mexico as groundless, will as certainly protest against the surrender of 77,000 square miles of soil, pregnant with liberty, to the hazards of this adjustment. Both of these parties, I think, must agree that the United States ought not to pay Texas the equivalent unless her title is good; and that if her title is good, then the United States have no constitutional power to buy her territory. If they may buy a part of Texas for purposes not defined in the Constitution, they may buy the whole. If they may buy the territory of a slave state to make it free, they may equally buy the soil of a free state to sterilize it with slavery. If it be replied that the title is in dispute, then the transaction changes character; the equivalent is paid for peace: and Texas is not yet lifted up so high, nor are the United States brought down so low, as to obtain my consent to so humiliating a traffic.

I have heretofore said that I could vote to pay the debt of Texas, on the ground that the repudiation of it by the United States, in the agreement of annexation, was fraudulent. But Texas seems to prefer that we should buy domain and dominion from her rather than pay her debts. She must be content, therefore, to satisfy us concerning the cardinal points in the bargain, viz:

First. *The reasonableness of the amount to be paid.*

Secondly. *The value of the equivalent we are to receive.*

Thirdly. *The title of the vendor.*

Fourthly. *The use to which the territory is to be applied.*

First. How much are we to pay? The sum is set down in ——, and the blank is pertinaciously kept open. "The hart Achilles

keeps thicket here." A philosopher replied to a man who asked leave to see what he carried under his cloak, "I carry it there that you may not see it."

Well, we are obliged to assume that Texas is to be paid more than her claim is worth, because she will not trust to a distinct and independent negotiation. The payment is a condition of the admission of California; and thus we see California—the desire of the nation and the envy of the world—reduced by the senate of the United States to the humiliation of chaffering and cheving with money-changers and stock-brokers, continually baiting her offers with richer rewards, to obtain her admission into the Union.

The extent and value of the acquisition are equally unsatisfactory. When the question is on the sum to be paid, Texas owns nearly all New Mexico; but when it comes on the domain to be obtained, it turns out that we are to cede to Texas a part of that province to save the rest; and to pay her ten or fifteen millions to induce her acceptance of the cession. Surely, if we concede to Texas the admiration her representatives require, they must admit that she knows how to coin our admiration into available gold.

The *title*. It is beyond dispute that the territory which Texas offers was, from time immemorial, an integral part of New Mexico, and that not an acre of it ever was in the possession of Texas. It is equally clear that the United States found it in the possession of Mexico, and conquered and bought it, and that they hold it by treaty solemnly executed. It is as certain that Texas never conquered it, never bought it, and has no treaty concession to show for it.

But, Texas insists that she has an equitable title. She asserted, I think in 1836, by a law in her statute book, that her boundary should be the 42d parallel; that is, she declared her purpose to conquer so much of New Mexico. But she never executed, nor even attempted to execute, that purpose. She came into the United States without having executed it. Her statute, therefore, was mere *brutum fulmen*. The United States, in the articles of annexation, refused to commit themselves to the claim of Texas. Subsequently the United States waged war against Mexico, not for the claim of Texas, but for other causes. The war was waged to obtain satisfaction of commercial debts, and indemnities for the expenses of the war. Being thus engaged in war, the United States accepted New Mexico and California in satisfaction of the

commercial debts and the expenses of the contest, after paying fifteen millions of dollars for their excess in value. Thus the United States, free from obligation to Texas, acquired the territory of New Mexico, making the conquest and paying the whole consideration alone. The claim of Texas is as groundless in equity as by the strict rules of law. The claim of Texas is just as good to the whole of California as to New Mexico.

Nor is the proposition more satisfactory in regard to the purposes to which the territory is to be applied. I am satisfied that the soil of New Mexico is free soil now, by operation of unrepealed Mexican laws. I know that it would be less surely free if this bill were passed. The bill would raise a cloud upon the question. I prefer rather to leave New Mexico as it is.

New Mexico has no representative here. Every phase of this compromise exhibits a dismemberment of her territory; and yet she is to receive no equivalent. Texas already has a vast domain of surpassing fertility. New Mexico is less expansive and comparatively sterile. This bill, nevertheless, literally applies the Scripture, "For unto every one that hath shall be given, and he shall have abundance; but from him that hath not, shall be taken away even that which he hath."

This perversion of right proceeds upon the ground that either New Mexico has no certain title, or that she has no political government to defend it.

Sir, New Mexico was a distinct colony of Spain. New Mexico was a state in the republic of Mexico, and afterwards was a political territory in that republic. She was never less than that. We found her in that condition and character. She retains that character now. Only her allegiance is transferred to the United States, while some of the powers of government, suspended by conquest, remain in abeyance. She is a republic according to the definition of Cicero: "*Res publica, res populi; populus autem, non omnis hominum cœtus, quoquo modo congregatus, sed cœtus multitudinis, juris consensu, et utilitatis communione sociatus.*"

New Mexico has domain, population, resources, and qualified dominion—arts, customs, laws, and religion. She holds these physical and moral elements of a state subordinate to the United States, but nevertheless distinctly and apart from all other communities. New Mexico, moreover, has framed her institutions on the principle of the common origin of man and the common

government of God. And thus she possesses the first, last, and chief element of democratic or republican states—impartial civil liberty—that element which favors the creation of wealth, without which a state must be powerless; the equalization of property, without an approximation to which a state is exposed to oppression; the diffusion of knowledge, without which republican institutions cannot be preserved; and the development of strength, courage, and enterprise, without which a state cannot flourish. New Mexico has adopted the system that is best fitted to maintain war, and the system that is best adapted to secure peace. New Mexico, therefore, might well have aspired, even under Mexican sway—much more may she aspire under the fostering care of the United States—to such greatness as the free states in this Union have attained—such greatness as is attainable by only purely democratic states.

New Mexico, pressed by the encroachment of Texas, and by the jealousy of the slave states, implores from us protection of her territory and of her constitution. This bill of compromise compromises her claims by dividing her territory right and left, boldly assigning a part to undisguised slavery, and the rest insidiously to exposed freedom. Sir, if I concur in giving any government to New Mexico, it must be as good a one as she has already. Although the drama of our conquest in Mexico falls into successive acts, conducted by different performers, it is nevertheless one whole transaction; and if this bill shall pass, that transaction, so far as New Mexico is concerned, will be a conquest of a free republic, and the conversion of it in whole or in part into a slave state.

What is New Mexico that she should be thus wronged? An unoffending rival, prostrate at our feet? I pray you, senators, for the sake, if not of justice, at least of magnanimity, to exercise your power over her by sparing her—to punish by forgiving her the crime of loving liberty too well. Her ancient charter contains the glowing words—established by the consent of mankind as the foundation of all true government, which Jefferson made our own—"All men naturally were born free, and were, by privilege above all the creatures, born to command, and not to obey earthly authority, not derived from their own consent." That charter is in our hands.

If we rase all that out, and give the charter back to New Mexico,

a mutilated and lifeless thing, we shall have repeated the crime of the partition of Poland, the crime of the subversion of the recent brief, but brilliant republic of Italy; we shall have emulated the Stuart, who seized the charters of the free corporations of England, and thereby lost a throne; and shall have surpassed the Guelph, who interpolated taxation without representation into the Constitution of Britain, and thereby lost the empire which we enjoy. Sir, it would be an act so unjust and so tyrannical, that, upon the principles of our own separation from Great Britain, it would work a forfeiture of our title altogether. Hear what the good Las Casas said to the Emperor Charles the Fifth, concerning these very possessions:

"Notwithstanding your grant of all these countries from the Pope, and your title by conquest, you have yet no right over them, unless you do in the first place, as the principal end, regard their good. The reason is, that regard is to be had to the principal end and the cause for which a superior or universal lord is set over them, which is their good and profit, and not that it should turn to their destruction and ruin; for if that should be, from thenceforward that power would be tyrannical and unjust, as tending more to the interest and profit of the lord, than to the public good and profit of the subjects, which, according to natural reason and the laws of God and man, is abhorred, and deserves to be abhorred."

Sir, I beg those citizens of the metropolis in the state from which I come, who have requested me to vote for this bill, to consider it in these respects, and then to "examine me, and say how look I, that I should seem to be lacking in justice and humanity so much as this fact comes to."

But it is said that the ordinance of 1787 is unnecessary in New Mexico, and therefore is an abstraction, and that it gives offence.

I cannot yield implicit faith to those who assure me that peculiarities of soil and climate in New Mexico exclude slavery. They are combined with other statesmen who deny that point; and this bill concedes away the point itself. It expressly covenants to admit New Mexico as a slave state, if she shall come in that character. I cannot surrender a just and benevolent purpose to arguments which knit contradictions as closely as words can lie together. I know that there are slaves at this moment in Utah; and I know, moreover, that the discovery of a few flakes of gold, or of a few grains of silver, or even of a few lumps of coal in the unexplored recesses of New Mexico, would be followed by a new revelation of the will of the Almighty in regard to it.

Sir, perhaps those who excuse this measure can point me to a tyrant who ever deprived his subjects of what he deemed neces-

sary for them. A Roman Emperor thought one neck was enough for the Roman people, when he wished they had but one that he might destroy the body politic at a blow. Perhaps they can point me to any act conferring or declaring human rights that was not an abstraction. It was observed by one of the founders of the commonwealth of England, that the promulgation of those rights had always "been in terms not concrete, but abstract."* Our own experience is the same. There is the Declaration of Independence, with its solemn recital of the natural equality of men, and of the inalienability of their essential rights. There is the Constitution of the United States, beginning with its sublime summary of the objects of the government, and ending with its jealous bill of personal rights. What were these but abstractions? There is the same bill of rights in every constitution; and even the constitutions of many of the slave states hopefully assert abstractions of equality, which, for want of only a complete development of political justice, are not yet reduced to the concrete by established laws.

Perhaps, moreover, the apologists can show me some act declaratory of human rights that did not give offence. The tyrant of France took umbrage at the noble motto which Algernon Sydney inscribed in the album of the king of Denmark:

———Manus hæc, inimica tyrannis,
Ense petit placidam sub Libertate quietem.

Nay, Algernon Sydney expiated with his life the offence of writing as mere abstractions the fundamental principles of our own Constitution; and among them was the Wilmot Proviso, thus expressed by that immortal patriot: "The liberty of one man cannot be limited or diminished by one or by any number of men, and none can give away the right of another."

Equal justice always excites fear, and therefore always gives offence; otherwise its way would be smooth and its sway universal. The abstractions of human rights are the only permanent foundations of society. It is by referring to them that men determine what is established because it is RIGHT, in order to uphold it forever; and what is right only because it is established, in order that they may lawfully change it, in accordance with the increase of knowledge and the progress of reason.

The abstraction now in question is the right of all the members

* Milton.

of a state to equal political freedom. That is the Wilmot Proviso —that is the proviso of freedom—call it by whatever name you will. If it ever was right at any time, in any place, under any circumstances, it is right always, in all places, and under all circumstances. It can be renounced safely nowhere. Certainly New Mexico is not the region, nor is hers the soil, nor hers the clime, where it should be renounced. New Mexico is the very field of the contest. If we surrender here, where we have all the vantage, where else shall we find ground on which to make resistance?

We have taken a breathing spell from annexation of territory to divide the gains. This division once made, no matter how, the national instinct—an instinct fostered by democratic sentiments and sympathies, and invigorated by martial ambition—will hurry us on again, in a career that presents few formidable obstacles. Whatever seemed attractive to the slave states in Louisiana, in Florida, in Texas, in New Mexico, and in California, is surpassed in the valley of Mexico, in Yucatan, in Cuba, in Nicaragua, in Guatemala, and in other states of Central America. *There* are fields native to the tobacco plant, to the rice plant, to the cotton plant, and to the sugar cane, and the tropical fruits; and there are even mines of silver and of gold. There the climate disposes to indolence, indolence to luxury, and luxury to slavery. There those who can read the Wilmot Proviso only in the rigors of perpetual winter, or in arid sands, will fail to discern its inhibition. Our pioneers are already abroad in those inviting regions; our capital is making passages through them from ocean to ocean; and within ten years those passages will be environed by American communities, surpassing in power and wealth, if not in numbers, the unsettled and unenterprising states now existing there. You will say that national moderation will prevent further annexation. But national moderation did not hold us back from the Mississippi, nor from the Nueces, nor from the Rio Grande, nor from even the coast of the Pacific ocean. The virtue grows weaker always as the nation grows stronger.

The demand of the slave states for a division line of 36° 30′, or elsewhere across the continent, between slavery in the south and freedom in the north, betrays the near expectation of these conquests. The domestic production and commerce in slaves will supplant the African slave trade, and new slave states will surround the Gulf of Mexico and cover its islands. Those new states,

combined with slave states already existing, will constitute a slave empire, whose seat of commerce on the Crescent levee will domineer not only over the southern portion of the continent, but, through the Mississippi and its far-reaching tributaries, over the broad valley that stretches away from the foot of the Alleghanies to the base of the Rocky Mountains.

This, sir, is the dream of the slaveholder, and this is the interpretation thereof. I know full well that it is woven of the stuff that all "dreams are made of." I know how hopeless would be the attempt to establish and to maintain such states, and an empire composed of such states. But I know that nothing seems to slavery impossible, after advantages already won; and that calamities, distant, and therefore derided, will not deter it from the prosecution of its purpose, or extinguish the hope of success.

There is a sound maxim which teaches that every government is perpetually degenerating toward corruption, from which it must be rescued at successive periods by the resuscitation of its first principles and the re-establishment of its original constitution. The blood is not more native to the heart than the principle of the equality of men contained in the ordinance of 1787 to the Constitution of the United States. The Constitution of the United States confers no power upon Congress to deprive men of their natural rights and inalienable liberty. I shall, therefore, insist upon applying the proviso, not only where it is necessary to save a territory from slavery, but even where its application might be waived, as a means of preserving and renewing the Constitution itself. It cannot be bad political husbandry to stir the earth and apply fresh mould to the roots of the vine our forefathers planted, when its branches are spreading themselves abroad and clustering upon the states which surround us.

Cherishing these opinions, I have struggled, and I shall struggle to the last, to extend the ordinance of 1787 over New Mexico. If I fail in that, I shall not then surrender it by entering into the riddling covenant contained in this bill; but shall fall back, as I did in the case of California, upon the people of the territory, and leave New Mexico in the mean time under the protection of her ancient laws, deeming her "more safe in sitting free, though without guard, in open danger, than enclosed in a suspected safety." This, sir, will be non-intervention—such non-intervention as you and I can practice and can justify; not voluntary, self-imposed

non-intervention, to betray or expose freedom, but non-intervention enforced, when all intervention to save it has failed. The President anticipated that failure, through the known discordance between the two houses of Congress, as we all might well have anticipated it, and therefore he recommended the alternative without an unnecessary trial. It would have been wise for the slave states to have adopted it then; it would be wise for the Senate to adopt it now. If we reject it a little longer, we shall only reach it at last through the necessity which he so well foresaw. When that time comes, he will have his triumphant vindication; for then it will be said truly of him, as it was of the noble Roman, never did he do more for harmony and for freedom than when to dull and prejudiced apprehensions he seemed to be doing nothing.

I need only indicate the application of these remarks to Utah.

The District of Columbia, the offspring of the republic, is cherished equally by all of the states; and if the destinies of the nation are correctly apprehended, the capital must one day stand "in dignity and for the liberal arts" without a parallel. But it yet lacks one element of prosperity—the freedom of labor; and one element of greatness—the dignity of labor. Its atmosphere suppresses, although it cannot smother, the love of liberty, which is a public, universal, and undying affection. Why should the great interests of the capital be cast into the balance, to bring up the already buoyant scale of California? The only reason is, that you have decided to overload that scale with the weight of your gratuity to Texas, and of the suppression of freedom in Utah and New Mexico.

Such, sir, is the manner in which California, Texas, New Mexico, Utah, and Columbia, are wronged, by casting their interests into the misshapen chaos of fair-seeming forms, and mischiefs manifold, which constitutes this extraordinary scheme of compromise and adjustment.

The scheme has engrossed the Senate six months, to the exclusion of nearly every other measure. If it ever shall reach the House of Representatives, its most auspicious promise there is a rejection, to be followed by a final disagreement between the two houses. And this will be the sum of the history of the first session of the thirty-first Congress—the history of an attempt to break, in one compact and twisted bundle, fagots so strong and gnarled that they could hardly be snapped singly—an attempt to

overcome reason, passion, and prejudice, altogether, instead of engaging reason alone.

We were driven and harassed into this strange proceeding by alarms of danger to the republic. Well, sir, California, New Mexico, Utah, the District of Columbia, were no sooner crowded and crammed into this unwieldy, rickety ark, through distrust of the customary vehicles of legislation, to weather out the dark and dangerous storm, than the storm passed away like a cloud in autumn. The ominous kalends of June have come, and with them the extra-constitutional assemblage at Nashville, but not its invading fleets and hostile armies. So also the crisis in the House of Representatives has come, without disclosing the steep ruin which was apprehended. The political elements have subsided from their wild uproar. Why not now let California resume the voyage in her own separate vessel, and, following the presidential chart, make the port speedily and in safety?

The answer is, that the commonwealth is laboring of wounds which threaten its safety. It cannot be improper to apply to each of them a tent that will search it to the bottom.

The first of them is the alleged neglect to surrender fugitive slaves. This wound bleeds afresh at every return of Congress to the capital:

> "Thammuz came next behind,
> Whose annual wound in Lebanon allured
> The Syrian damsels to lament his fate
> In amorous ditties all a summer's day."

Sir, it is not proved here that three fugitives a year are withheld against lawful demand; nay, I think it is not proved that even one is so withheld. The value of what is called slave property, because the laws of slave states treat it as property, is not impaired one dollar. Strength, and beauty, and youth, bring their accustomed prices. What, then, is the evil? The people of the free states hesitate at the execution of the act of 1793 among them, without an adequate provision for distinguishing between the fugitive and the free citizen—between surrendering the unhappy slave, and kidnapping the still more unhappy freeman. And what is your remedy? To give the form of a trial after the surrender, in the state to which the alleged fugitive is conveyed! Sir, this will only aggravate the exaggerated evil. Are you, then, prepared to confess that this proud republic ap-

proaches its downfall, because a slave sometimes finds a refuge under it, in spite of its laws?

The next of these evils is the agitation about slavery in the District of Columbia. There are only two thousand slaves here, all told. The people of the free states remonstrate against their being held in hopeless bondage; but they wait patiently, until the mind of the nation can be moved to abolish it. What answer does this scheme give to these remonstrances? It proposes to remove the slave shambles across the Potomac; and, in return for that concession, exacts a bond for the continuance of slavery here, until Maryland shall consent to its abolition. Sir, this is healing the wound by plunging deeper into it the knife that made it. Shall we, then, authorize the newly-returned minister from Russia to give to his imperial master the gratifying intelligence that this republic, the only counterpoise of his despotism, hastens to its fall by a cause so inadequate and so inglorious as the bare possibility that two thousand slaves may, some five, ten, or twenty years hence, be redeemed from bondage?

The next of these evils is the encroachment of Texas upon New Mexico. Well, sir, we will leave the territory of New Mexico in the keeping of the President, and her free institutions to the care of her own people, until she can come here as a state and demand admission into the Union.

The fourth of these disasters is the solitude of ten thousand Mormons in the far off basin of Salt Lake. But this solitude is of their own choice. They could not live under our governments in any of our states. It is, therefore, solitude sweetened by independence. The remedy proposed by the compromise is to extend to them institutions like those from which they fled. Sir, the Mormons, when they shall have gathered a population adequate to sustain a state government, can establish one; and, in the meantime, they will be living under the protection of our arms, and enjoying the only laws they are yet prepared to endure.

There is, then, only one real wound upon the body politic—the suspense of California. This is a wound, whose pain is not relieved by anguish in any other part; and this is the very one which, with exquisite surgery, the President proposes we shall heal immediately, and by itself, alone.

But it is insisted that, trivial as these disturbances are, the country is nevertheless irritated, excited, and distracted. Sir, the

country seems to me neither excited nor distracted. It is worried by our own delay, and has become impatient—not impatient enough yet to approve this bill, but impatient for the admission of California alone. That is all.

Still it is replied that the slavery question must be settled. That question cannot be settled by this bill. Slavery and freedom are conflicting systems, brought together by the union of the states, not neutralized, nor even harmonized. Their antagonism is radical, and therefore perpetual. Compromise continues conflict, and the conflict involves, unavoidably, all questions of national interest —questions of revenue, of internal improvement, of industry, of commerce, of political rivalry, and even all questions of peace and of war. In entering the career of conquest, you have kindled to a fiercer heat the fires you seek to extinguish, because you have thrown into them the fuel of propagandism. We have the propagandism of slavery to enlarge the slave market, and to increase slave representation in Congress and in the electoral colleges—for the bramble ever seeks power, though the olive, the fig, and the vine, refuse it; and we have the propagandism of freedom to counteract those purposes. Nor can this propagandism be arrested on either side. The sea is full of exiles, and they swarm over our land. Emigration from Europe and from Asia, from Polynesia even, from the free states and from the slaves states, goes on, and will go on, and must go on, in obedience to laws which, I should say, were higher than the Constitution, if any such laws were acknowledged here. And I may be allowed here to refer those who have been scandalized by the allusion to such laws to a single passage by an author whose opinions did not err on the side of superstition or of tyranny:

"If it be said that every nation ought in this to follow their own constitutions, we are at an end of our controversies; for they ought not to be followed, unless they are rightly made; they cannot be rightly made if they are contrary to the universal law of God and nature."—*Discourses on Government, by Algernon Sydney.*

But I was speaking of emigrants; and I say that wherever those emigrants go—whether they go from necessity or of choice—they form continuous, unbroken, streaming processions of colonists, founders of states, builders of nations. And when colonies are planted, states are founded, or nations built, labor is there the first and indispensable element, and it begins and prosecutes to the end its strife for freedom and power. While the sovereignty of the

territories remains here, the strife will come up here to be composed. You may slay the Wilmot Proviso in the Senate chamber, and bury it beneath the capitol to-day; the dead corse, in complete steel, will haunt your legislative halls to-morrow.

When the strife is ended in the territories you now possess, it will be renewed on new fields, north as well as south, to fortify advantages gained, or to retrieve losses incurred, for both of the parties well know that there is "Yet in that word Hereafter."

Senators have referred us to the promise of peace which heralded in the Missouri compromise. Sir, that prophecy is but half its journey yet. The annexation of Texas, the invasion of Mexico, this prolonged struggle over California, this desperate contest for the snows and sands of New Mexico and Deseret, are all within the scope and limits of the prediction; and so are the strifes yet to come over ice-bound regions beyond the St. Lawrence and sunburnt plains beneath the tropics.

But while this compromise will fail of all its purposes, it will work out serious and lasting evils. All such compromises are changes of the Constitution, made in derogation of the Constitution. They render it uncertain in its meaning, and impair its vigor, as well as its sanctions. This compromise finds the Senate in wide divergence from the House of Representatives, by reason of the undue multiplication of feeble, consumptive states, effected by former compromises of the same sort. You will increase that evil until the Congress of the United States will be unable to conduct the business of the country, by reason of a chronic disagreement between this and the popular branch; and the result will be the abolition of one branch or of the other; the abolition of either would probably be fatal to liberty.

This compromise is rendered doubly dangerous by the circumstance that it is a concession to alarms of disorganization and faction. Such concessions, once begun, follow each other with fearful rapidity and always increasing magnitude. It is time, high time, that panics about the Union should cease; that it should be known and felt that the Constitution and the Union, within the limits of human security, are safe, firm, and perpetual. Settle what you can settle; confide in that old arbiter, Time, for his favoring aid in settling for the future what belongs to the future, and you will hereafter be relieved of two classes of patriots whose labors can

well be spared—those who clamor for disunion, either to abolish slavery or to prevent emancipation, and those who surrender principles or sound policy to clamors so idle.

Sir, the agitations which alarm us are not signs of evils to come, but mild efforts of the commonwealth for relief from mischiefs past.

There is a way, and one way only, to put them at rest. Let us go back to the ground where our forefathers stood. While we leave slavery to the care of the states where it exists, let us inflexibly direct the policy of the Federal Government to circumscribe its limits and favor its ultimate extinguishment. Let those who have this misfortune entailed upon them, instead of contriving how to maintain an equilibrium that never had existence, consider carefully how at some time—it may be ten, or twenty, or even fifty years hence—by some means, by all means of their own, and with our aid, without sudden change or violent action—they may bring about the emancipation of labor and its restoration to its just dignity and power in the state. Let them take hope to themselves, give hope to the free states, awaken hope throughout the world. They will thus anticipate only what must happen at some time, and what they themselves must desire if it can come safely, and as soon as it can come without danger. Let them do only this, and every cause of disagreement will cease immediately and forever. We shall then not merely endure each other, but we shall be reconciled together, and shall realize once more the concord which results from mutual league, united councils, and equal hopes and hazards in the most sublime and beneficent enterprise the earth has witnessed. The fingers of the Powers above would tune the harmony of such a peace.

FREEDOM IN THE DISTRICT OF COLUMBIA.

SEPTEMBER 11, 1850.

INTRODUCTORY NOTE.—Mr. CLAY's bill for the abolition of the *slave trade* in the District of Columbia being under consideration in committee of the whole, Mr. PRATT, of Maryland, moved amendments which provided that the offence of *enticing a slave to escape*, or the offence of *assisting or favoring such an escape, or of harboring a slave with a view to assist his escape from slavery, should be a felony, punishable with not less than two nor more than ten years' imprisonment in the penitentiary; and further conferring* upon corporations in the District of Columbia authority to impose conditions *upon the residence of free colored persons within the District.*

These amendments were adopted by a vote of yeas 26, nays 15; whereupon Mr. SEWARD submitted a proposition to strike out the whole bill and insert the following

AMENDMENT AS A SUBSTITUTE:

SEC. 1. Slavery shall forever cease within the District of Columbia, and all persons held in bondage therein shall be free. The Secretary of the Interior shall audit and pay, to all persons holding slaves within the District at the time this act takes effect, such damages as they shall suffer by the passage thereof; and the sum of two hundred thousand dollars is hereby appropriated to carry this act into execution, out of any money in the treasury not otherwise appropriated.

SEC. 2. An election shall be held in the District of Columbia to ascertain whether this bill is approved by the people thereof. Those who approve the act shall express their approbation by a ballot containing the words, "For emancipation in the District." Those who are opposed shall vote by ballot containing the words, "Against emancipation in the District." All persons entitled to vote for any municipal officer in the District, and all citizens of the United States residing within the District permanently, shall be deemed qualified to vote at such election. Such election shall be held within six months from the passage of this act, and on public notice of not less than three months, to be given by the Marshal of the District. If a majority of the votes given at such election shall be in favor of this act, it shall go into effect immediately. If a majority of the votes shall be against the same, this act shall be void and of no effect.

The question was on the substitute.

IN submitting so grave a proposition as this, I am aware that it would be no unreasonable demand on the patience of the Senate or that of the country, to ask for time enough to explain the policy of the measure, and to defend the form in which it is submitted. But there remain only fifteen secular days of this session of Con-

gress, and in my judgment the time has come for debate to cease, and for action to go on. I forbore from debate on offering the amendment for this reason; and I forbore, also, because at an earlier stage of the session, I had discussed at large all the principles involved in the measure. I had yet another reason for that forbearance.

Speaking for myself alone, and imputing no prejudice and no injustice to others, I may be allowed to remark that the abolition of slavery anywhere seems to me a just and wise policy, provided it can be effected without producing injury outweighing its benefits. Opposition to emancipation in the District of Columbia, therefore, seemed to me to be a bad cause, and it is in the nature of a bad cause to betray itself. I did not mistake, then, in supposing that the opposition which my proposition would encounter would prove its best vindication.

Influenced by these considerations, I shall not now address myself to the broad merits of the question, but shall be content with simply adverting to the points which have been made during the present debate. The first point was made by the honorable senator from Georgia, [Mr. DAWSON] with the concurrence of some other senators, and consisted in the improper or bad motives which they saw fit to impute to the author of the measure. Sir, the great instructor in the art of reasoning (Lord Bacon) teaches that it is better always to answer to the "matter" of an adversary than to his "person." The imputation of motives does not come within that rule, and therefore it falls at my feet. The measure I have submitted is either right or wrong. If right, no unworthiness of motive of mine can detract from its merits; if wrong, no purity of motive can redeem it.

The second point is that which has been so fully answered by the honorable and distinguished senator from Kentucky, [Mr. CLAY] viz.: that Congress has no power to abolish slavery in the District of Columbia. I find that power in the Constitution, and it is defined by these words: "To exercise exclusive legislation in all cases whatsoever over such district, not exceeding ten miles square, as may, by cession of particular states, and the acceptance of Congress, become the seat of government of the United States."

The District of Columbia is that district not exceeding ten miles square. It has become the seat of the government of the United

States by cession of the state of Maryland, accepted by Congress. It is of the very nature of the power that it is "exclusive," and applies "to all cases whatsoever," whenever the district becomes, in the manner defined, the seat of the government of the United States. This, I think, is a conclusive answer to the argument of the honorable senator from Kentucky, that it is limited by an implied understanding that it should not be exercised to abolish slavery. Neither could the state of Maryland make nor could the United States yield such a reservation.

An *exclusive* power is that power which is possessed and may be exercised independently of all other sovereignties on earth. Congress, then, having "exclusive power," has absolute sovereignty, unless cases be excepted in which it shall not be exercised. But such exceptions are excluded by the broad expression, "in all cases whatsoever."

Those who framed the Constitution were fully aware of the extent of the power which it conferred. Mr. Madison thus describes it in the 43d number of the Federalist:

"The indispensable necessity of complete authority at the seat of government, carries its own evidence with it. It is a power exercised by every legislature in the Union—I might say of the world—by virtue of its general supremacy."

Yes, sir, it is a *complete*, not an *imperfect* power. It is a power over the district, equal to any authority which can be exercised by *any legislature of any* "*state* in this Union," or by any legislature of any state or nation "*in the world.*" It is a power described in the philosophy of government, as "*summum imperium, summo modo*"—a power, within the region of its exercise, complete, absolute, universal. Now, every legislature in this Union, every sovereign authority in the world, has the power to abolish slavery. More than half the states in this Union have abolished or prohibited it. France, England, and Mexico, have abolished and prohibited it. Congress can do, in the District of Columbia, what they have done within their respective dominions.

I dwell upon this point only a moment longer. Slavery within the District of Columbia exists only by the action of Congress. Instead of pursuing the argument further, to prove that Congress has the power to make a *free* man, I demand proof that Congress possesses the power to make a *slave*, or hold a man in bondage.

All the other points which have been raised, apply, not to the

merits of the proposition for emancipation, but only to the form and manner of carrying it into effect. Such were the objections raised by my honorable and esteemed friend from Connecticut, [Mr. Baldwin,] and my no less honorable and esteemed friend from Massachusetts, [Mr. Winthrop.] It will be seen at once, that these objections concede that the principle of the measure is right. Nevertheless, without holding those gentlemen to this concession, but leaving them to judge and act for themselves, I shall be content to reply to them, so far only as to vindicate the plan of emancipation embodied in the amendment. What, then, is the form, and what the manner proposed? The amendment declares that slavery shall forever cease in the District of Columbia, and that all persons held in bondage therein, when the act shall go into effect, shall be free. It directs the Secretary of the Interior to pay the damages which any person holding slaves within the district shall incur by reason of its passage, and it appropriates two hundred thousand dollars as a fund for that purpose. The amendment further provides for an election, in which the qualified and competent citizens of the district shall express their approbation or disapprobation of the act. If they disapprove, it shall be void and of no effect.

I submit, sir, in the first place, that the plan is *adequate*. It will secure the abolition of slavery within the district, if it obtain the consent of those who are most particularly concerned in the question. I have not learned from either of my honorable friends that he is in favor of emancipating the slaves without the consent of the people in the district, and we have all heard other honorable senators insist upon that consent as indispensable. I do not insist upon it for myself. I have only surrendered so much to their objections; but if a majority of the Senate shall waive the objection, it would give me pleasure to modify the plan accordingly.

Secondly, the plan is an *equal* one. While it restores to the slave the inestimable right of freedom; it awards to him, who, by authority of Congress, has hitherto held the slave in bondage, a just remuneration and indemnity for his loss. It is, then, adequate and equal.

Thirdly, the plan is not violent nor capricious, but is *deliberate* and *prudent;* for it makes this solemn transaction to depend upon a canvass to be continued not less than three months, nor longer than six months, among the people of the district.

Fourthly, the plan is *broad* enough. I am informed by what I believe credible evidence, that the number of slaves within the district, as ascertained by the census, male and female, old and young, great and small, is about six hundred,* and that their value is estimated by those who regard them as subjects of traffic, as I certainly do not, at three hundred dollars for each person, and in the aggregate one hundred and eighty thousand dollars. The amendment appropriates two hundred thousand dollars. If the sum is too great, nothing will be lost. If it is too small, the deficiency can be now or afterwards supplied.

But my honorable friend from Massachusetts, [Mr. Winthrop,] objects that the amendment contains no provision for the support of the slaves, or of any of them, after their emancipation. Sir, if I could admit that this objection had weight, it would be a sufficient answer that, in the judgment of other senators, such a provision would only tend to defeat the object in view.

If honorable senators think I err in this, let them submit such a provision, and if it do not embarrass the bill, it shall receive my vote.

But I think the objection itself is not well grounded. The slave is held in bondage, not for his own support and for his own benefit, but for the support and benefit of his master. It is the slave, then, that supports, or contributes to the support, of the master, and not the master that supports the slave. It is not in humanity that it should be otherwise. Relieve the slave, then, from the support of his master, and his whole energies will be directed to making provision for himself and his own family. The instincts of the common nature which he shares with us will do the rest. But you may reply that these persons are degraded, so as to be unable to take care of themselves. On the contrary, it is in this district that the institution assumes its most cheerful, or least repulsive aspect. Here, in the centre of the Union, in the capital of this free empire, the African race has been held in bondage from generation to generation, through a period of near two hundred years. We all trust, we all believe, that the ultimate result of the transfer of this foreign population to our own shores, is to be the bringing of them to a condition to support themselves, and to exercise the privileges of self-government. It is a sad commentary upon the operations of our own institutions, to say that two hundred

* The census returns afterward showed the number to be about 2000.

years have not been enough to bring these six hundred persons, under such favorable auspices, to the capability of providing for their own daily wants.

The next objection to the measure which I shall notice is, that it is an indiscreet one. This, I think, was the language of my honorable friend from Massachusetts, [Mr. WINTHROP.] The objection implies assent to the justice and wisdom of the measure itself, and takes issue only upon the time, occasion, or circumstances in which it is proposed. It concedes, moreover, that it would be proper at a different time, on some other occasion, or in some other circumstances.

Let us see, then, wherein the indiscretion consists. And, first, as to the occasion. One honorable senator [Mr. WINTHROP] says that by supporting it on this occasion we should incur the risk of losing the bill itself which is proposed to be amended, and thus losing the abolition of the slave trade within the District of Columbia. Suppose we do. What would be the loss? The amendment before you secures the abolition of the slave trade, for it abolishes slavery altogether. When slavery falls, the trade, which is only an incident of it, must instantly cease. But the senator is afraid that, between the two, both will be lost. That cannot happen. The passage of either will accomplish the object in view.

If the amendment shall pass, you will have a better law than the bill of the Committee of Thirteen. If the amendment shall fail, you will still have the bill of the Committee of Thirteen.

But the bill of the Committee of Thirteen is not put in jeopardy. It is lost, or worse than lost, to us already. If it had not been, I should not have offered my proposition as an amendment. The abolition of the slave trade, indeed, remains in the bill; but conditions have been annexed which cannot be accepted, and which compel us of the free states to reject the bill itself. One of these conditions is, the converting into a felony, punishable with ten years' imprisonment, the act of aiding or favoring the escape of a fugitive slave, or even the act of harboring a slave with a view to aid his escape. The punishment already denounced by the law is severe enough, in my judgment, for an act that is wrong, not because it is erroneous in itself, but only because it is declared by the statute to be wrong. The second condition which has been annexed to the bill is, the conferring of a right upon the corporations within the district to impose conditions upon which freed men shall be

allowed to enter and remain in the district, or depart from it; in other words, to *proscribe* free men, who are citizens of the United States and of the free states.

By the addition of these conditions, the bill has been converted from a law meliorating slavery within the district, into a law to fortify slavery and proscribe free men. When that was done, my last hope, my last purpose, my last thought of supporting the bill, was gone. And yet this bill is the bill which the honorable senator from Massachusetts complains that I am putting in jeopardy. This, sir, and nothing other or different from this, is the boon which he says was just within our grasp, and which I have struck down to the earth. Sir, when my amendment shall have been rejected, this bill will still remain. I wait to see whether he will embrace it, and take it to his bosom. I shall not harbor it; it would sting me to death.

So much, sir, for the occasion. And now for the indiscretion, so far as it depends upon time and circumstances. I think it wrong to hold men in bondage at any time and under any circumstances. I think it right and just, therefore, to abolish slavery when we have the power, at any time, at all times, under any circumstances. Now, sir, so far as the objection rests upon the time when this measure is proposed, I beg leave to say that if the present is not the right time, then there must be, or there must have been, some other time, and that must be a time that is already past, or time yet to come. Well, sir, slavery has existed here under the sanction of Congress for fifty years, undisturbed. The right time, then, has not passed. It must, therefore, be a future time. Will gentlemen oblige me and the country by telling us how far down in the future the right time lies? When will it be discreet to bring before Congress and the people the abolition of slavery in the District of Columbia? Sir, let not senators delude themselves. I had the honor to submit to the Senate some weeks ago, a proposition to admit New Mexico as a state. It was rejected then by a vote unanimous, except my own—those who were in favor of the measure voting with its opponents, because it was not the *right time*. They said the Constitution had not been officially received. It was not a fit occasion. The measure was offered as an amendment to a bill.

Well, sir, the constitution was officially received yesterday, and the senators of the state were in waiting here. But New Mexico,

in the meantime, had been organized as a territory, and now her state constitution is not even honored with a reference. There is no right time, no fit occasion, for New Mexico to enter the Union as a free state. So, sir, it will be with the abolition of slavery in the District of Columbia. The right time, if it be not now, will never come. Sir, each senator must judge for himself. Judging for myself, I am sure the right time has come. Past the middle age of life, it has happened to me now, for the first time, to be a legislator for slaves. I believe it to be my duty to the people of this district, to the country, and to mankind, to restore them to freedom. For the performance of such a duty, the *first* time and the *first* occasion which offers is the *right* one. The people who sent me here knew my opinions and my principles on that subject. If I should waive this time and this occasion, such is the uncertainty of human life and of human events, that no other may offer themselves to me. I could not return to the people who sent me here, nor could I go before my Maker, having been here, without having humbly, but firmly, endeavored to discharge that great obligation.

Sir, I can spare one word of reply, not to the wretched imputation that I seek by this measure to dissolve the union of these states, but to the argument that the measure itself tends to so disastrous a consummation. This Union is the feeblest and weakest national power that exists on earth, if with twenty millions of freemen now it cannot bear the shock of adding six hundred to their number. The Union stands, as I have demonstrated at large on former occasions, not upon a majority of voices in either or both houses of Congress upon any measure whatever, but upon enduring physical, social, and political necessities, which will survive all the questions and commotions and alarms of this day, and will survive the extinction of slavery, not only in the District of Columbia, but throughout the world. Others may try to save it, by concessions to slavery, from imaginary perils. I shall still seek to perpetuate it by rendering the exercise of its power equal, impartial, and beneficent to all classes and conditions of mankind.

FREEDOM IN NEW MEXICO.

JULY 26, 1850.

Mr. SEWARD submitted an amendment authorizing the President to issue a proclamation declaring that New Mexico should be admitted as a state on the presentation of her constitution heretofore adopted, and also authorizing New Mexico to appoint three commissioners, to be associated with the commissioners to be appointed by the United States and by Texas, in settling the boundary question between Texas and New Mexico

THE object of this amendment is to bring before the Senate an important question—the admission of New Mexico as one of the states of this Union, upon an equal footing with the original states, under the constitution which her convention has adopted.

I have heard here much of nationality—of national principles, sympathies, and feelings. Such principles, sympathies, and feelings, meet my highest respect and admiration; but I differ very much from many who bestow that commendation, in regard to what principles, sympathies, and feelings, deserve the character of nationality. So far as I have heard here, it has generally been bestowed upon those movements which left out of view everything of paramount and ultimate importance, in regard to the perfection and permanence of the institutions of the country, and which were distinguished on the other hand by a disposition to concede and compromise for the present hour and for temporary purposes. I have no part in *such* principles, sympathies, or feelings. I believe that concession to-day only increases the evils and embarrassments of to-morrow. I will show how the question of boundary between New Mexico and Texas—that great question upon which the peace and harmony of the country are supposed to depend—may be, not postponed, but definitely and justly settled. That is the object of my proposition.

It will be said that the proposition is premature, because the Senate has no official information that a constitution has been sanctioned by the people of New Mexico. It is true that we have not that information, and therefore there *seems* to be a propriety in delaying the proposition.

Nevertheless, I find myself obliged to bring in the proposition, for the reason that an emergency, which I cannot control, brings the question up now, and requires the admission of New Mexico at the hazard of her admission *being forever lost.*

The amendment of the senator from Maine [Mr. Bradbury] provides for a disposition of the boundary dispute, which would absolutely prevent the Senate from considering the constitution of New Mexico and her demand for admission, when they should be presented here, with official authority, and with accustomed formality. It is not my fault that the question is thus sprung upon the Senate now. If the Senate will strike out from this bill all that relates to the boundary of Texas and to the territory of New Mexico, then the question of admitting New Mexico may be postponed until she shall present her constitution, which, however, is already unofficially on our tables.

But the Senate will do no such thing. It is apparent enough that the amendment of the senator from Maine [Mr. Bradbury] is to be adopted, and that amendment absolutely postpones the question of the admission of New Mexico until after the report of the commissioners shall have been confirmed by Texas and the United States. When that action shall have taken place, there will probably be no New Mexico to be admitted; certainly none worth admitting, or fit to be admitted. The delay, thus designed, is inconsistent with the interests and with the rights of the people of New Mexico. The senator from New Hampshire [Mr. Hale] has truly described those rights. They are indeed a conquered—a subjugated people. But they are, nevertheless, a people—a people constituting a community—and, as such, socially and politically enjoying rights as definite, as important, as the rights of the people of any territory, or even of any state within the United States. They have undergone a change of sovereignty only, but in all other respects their position and their rights are unchanged. When they lost the rights secured to them by the constitution of Mexico, they acquired the rights of American citizens secured to them by the constitution of the United States. Those rights in-

volve the protection of their property, of their lives, of their liberty, and of their territory. All these are rights of which the United States can lawfully deprive no community on earth. They may extend their conquering arm over states and territories and provinces, but it carries with it freedom and security to the people inhabiting the subjugated countries. Such are the rights of the people of New Mexico, secured to them by the law of nations, which follows immediately upon any conquest. But these rights, moreover, are expressly secured by the treaty of Guadalupe Hidalgo. The United States acquired New Mexico as a territory or province belonging to the empire of Mexico, and they stipulated by the treaty with Mexico, and of course with the people of the province of New Mexico, that they should be protected in all their rights before described, and should be admitted to the privileges of citizens of the United States, and should have government established over them.

Sir, the proposition which I submit is to fulfil that treaty in its letter and spirit—nothing more; and the time has come to insist upon nothing less. It is to incorporate New Mexico as a state. This provision stands opposed to the provision in the bill for incorporating only a part of New Mexico, as a dependent territory of the United States, assigning the rest to the state of Texas. I pray you to consider these two propositions upon their merits, respectively, and consider them well. In the first place, mine is most in harmony and most congenial with the treaty—with a fair and just construction of the treaty of Guadalupe Hidalgo. What is the language of that treaty? It is not that the province of New Mexico shall be admitted into the United States as a territory, or as a part of the state of Texas or of any other existing state in the Union; but it is that it shall be admitted as a state. The treaty contains no provision whatever for bringing that territory into provincial or territorial degradation. It is fair and just, therefore, to say that the treaty would be broken by denying to the people of New Mexico the rights and the position of a state. It is only fair to presume, that if the United States had contemplated that New Mexico was to be held in territorial vassalage indefinitely, they would so have expressed themselves in the treaty. I know that the right to judge of the time when New Mexico should be admitted as a state was reserved to Congress. But that is all that is reserved, the right to determine the *time when*. The

reservation keeps that province exactly in the condition in which we now find it, until Congress shall adopt the proposition to admit New Mexico as a state.

In the next place, my proposition is most compatible and harmonious with the constitution of the United States. It is a remarkable feature of that constitution, that its framers never contemplated colonies, or provinces, or territories, at all. On the other hand, they contemplated states only; nothing less than states; perfect states; equal states; as they are called here, sovereign states.

There was indeed a domain belonging to the United States at the time the constitution was adopted, which, for want only of population, was set off temporarily as a territory—the northwestern territory. But that was only a temporary arrangement. The arrangement itself provided for the subdivision of the territory, and its organization into five new states, the moment that it should be peopled. There is reason—there is sound political wisdom, in this provision of the constitution excluding colonies, which are always subject to oppression, and excluding provinces, which always tend to corrupt and enfeeble and ultimately to break down the parent state.

It appears, then, that the proposition which I have submitted is entirely congenial with the treaty and with the constitution of the United States. On the other hand, the proposition to extend a territorial form of government over this people, or to assign them in whole or in part to Texas, is in violation of both. New Mexico is entitled to be admitted into the Union *immediately*, because her interests *now* require it; and because the stipulation in the treaty, reserving to Congress the right to decide upon the time when, is to be regarded as reserving, not the exercise of discretion to oppress the people of New Mexico, but a discretion to be exercised for the benefit and welfare of that people—a discretion for their good, not for their oppression and ruin. What, then, is the time when New Mexico ought to be admitted? That is the only question. That time must have come, whenever it shall have happened that immediate admission has become necessary to save the liberties of her people, and the integrity of her territory. That is the time, precisely. And it has now come, for both are in danger. The liberties of New Mexico are in danger of being subverted, by her being merged into the state of Texas. Even

her political existence is threatened to be destroyed by the state of Texas, with an armed force. What answer will you give me on this point? None is made, except that New Mexico is not in a condition to be admitted. New Mexico fulfils all the conditions which you have ever required on the admission of a state into the Union. There is only one condition which the Constitution recognizes; and that is, that she shall present a republican form of government. New Mexico fulfils that condition. You have all seen and read her Constitution, although it has not yet been officially promulgated. You have heretofore established precedents, by which you have required a population of a given number to constitute a state, and that number is the one which constitutes the basis of the selection of one member of Congress. New Mexico more than fulfils that condition. She has a population of over one hundred thousand souls. She has a population double that of Florida, when she was admitted as a state. She has a population within two-thirds as large as Texas, which has two members of Congress. Sixty thousand inhabitants were deemed enough to entitle the state of Ohio to admission. The same number was required of Michigan, Indiana, Illinois, and Iowa. And New Mexico exceeds it by more than two-thirds.

But we are told that the people of New Mexico are unfit for self-government. Sir, this objection comes too late. No one, maintaining the capacity of man for self-government, and admitting the validity of the treaty, can assert that any one hundred thousand people, citizens of the United States, recognized as such by its constitution and laws, are incapable of the functions of self-government. I know it is said that you will govern them better than they can govern themselves. What is the guaranty you are offering, for governing them better than they can govern themselves? It is contained in this bill, to dismember their territory and subvert their constitution, which secures equal and impartial freedom. They can assuredly do better for themselves than that.

They are a mingled population—marked by characteristics which resulted from the extraordinary system of colonization and government maintained by Old Spain in her provinces—a policy entirely different from our own. The colonization of Spanish America proceeded altogether from an insatiable thirst for gold, and for nothing else. The government of Spain over her colonies was an

arbitrary despotism, conducted on the principle of deriving the utmost profit and advantage from her colonies.

The colonization of our states, on the contrary, was the result of an ardent thirst, not for gold, but for civil and religious liberty. Destitute even of the motive of ambition, the people of the United States grew up by slow degrees. It was one hundred and seventy years after the first attempt at colonization by the Anglo-Saxons, before any permanent or well-established institutions were founded in this country. And less than one hundred years ago, no Briton owned an acre in the valley of the St. Lawrence, or in the valley of the Mississippi, or between the Mississippi and the Pacific ocean. The career of Spain, on the other hand, was quick, brilliant, and successful; and the whole of the Spanish possessions on this continent rose at once into vast vice-royalties, rich in wealth, and filled with splendid and imposing displays of despotic power. But within the last hundred years, the Anglo-Saxon power has gone on steadily and firmly, increasing and encroaching, until it has overspread nearly the whole of the northern portion of the continent; while the Spanish provinces, decaying and declining, fall an easy prey to conquest.

The Anglo-Saxon colonization left the aborigines of this continent out of its sympathy, and almost out of its care. It left them barbarous and savage; and they still remain so. They remain in the condition of wardship under our protection, but denied a share in our government. On the other hand, the peculiar civilization which the colonists of Spain carried into her provinces, operated successfully in winning the Indians to Christianity and partial civilization. We have, therefore, this extraordinary result: That while we exclude Indians from the rights of citizenship at home, we have conquered the aborigines of Spanish portions of the continent for the purpose of making them citizens, and have extended to them the rights and franchises of citizenship. It is Indians, sir, that we have conquered. The population of New Mexico consists of some two thousand, all told, of the European races, generally Anglo-Saxons; and some ten thousand Creoles or descendants of the Spanish colonists; and some ninety thousand Indians, more or less mixed in blood, but all civilized and christianized.

My motion is to bring these peculiar people into the United States, as a state of this Union; and under the circumstances which have occurred, it is a motion upon which I shall stand, whoever

may oppose it, and in whatever way, as long as grace and strength are given me to stand up for anything. But if the question were now to arise, for the first time, whether such a people should be invited to share in the government of this Union, I should answer no. If the question were whether the public treasury should pour forth money to buy the consent of such a people to come into the Union, I should say no. Still more, if the proposition were to conquer such a people to bring them into the Union, I should resist it to the last. But these questions have all gone by. You have conquered these people. You have covenanted to bring them into the Union; and to bring them into the Union, not as a territory, not as a province, but as a state. And you can no longer protect or defend them in the rights they enjoy, unless you fulfil that treaty immediately and to the letter. They are, by the testimony of all historians and of all travellers, an inoffensive, harmless, timorous, and docile people. They must have protection and government. You owe them both. It is now painfully apparent that you can secure them neither in any other way than by allowing them the constitution of a state, and that immediately, too. This bill betrays on its face—this whole debate—this entire proceeding, betrays the truth of the proposition.

Sir, New Mexico is obliterated from the memory of the Senate and of the Congress of the United States. It is a name no longer to be spoken here. What was the territory of New Mexico, as a distinct territory, has ceased to be spoken of here, otherwise than as an unoccupied, an unappropriated, an undefined part of the domain of the United States. But New Mexico had just exactly the same individuality and the same rights in coming into this Union that Texas had. New Mexico was annexed by conquest, and Texas by treaty. But Texas was admitted into the Union by treaty as a state; and New Mexico was admitted into the Union, after conquest, by treaty, with the agreement that it should be a state. Now, there is a question in dispute between New Mexico and Texas—a boundary question. That question is vital to New Mexico, because the boundary claimed by Texas would include the capital, and all the most valuable and most densely settled portions of New Mexico. Congress is engaged in settling that boundary question, and proposes to settle it by a commission. Congress appoints commissioners to treat with Texas, and invites Texas to appoint commissioners, equal in authority with those of the United

States. So far, so well. But here is New Mexico, the other party in interest, the equal of Texas in rights, in justice, in position, in everything except what you withhold from her—the sovereignty of a state. She is unrepresented here. She has no voice here. And while she has no representative, no voice here, you deny her a share in the commission. I ask you now to fulfil your treaty obligations. Bring New Mexico in here as a state, that she may meet Texas as a state. Let her take part in this debate. Let us hear her present her wrongs and her rights. I have no doubt that she will speak as eloquently, and with as much justice on her side, as the state of Texas does on her side. Bring New Mexico in here. Before you decide upon her fate, give her a hearing. She appeals to you. Strike, if you will, but hear.

If you bring New Mexico in as a state, you will then have a security that justice can be done by the commissioners. Amendments which I have prepared, and shall submit, provide for the appointment of commissioners by New Mexico.

When Texas and New Mexico shall have appointed commissioners equal in number and in authority, the United States will then stand, where the parental government ought to stand, equal and impartial between the two contesting parties. Who can object, who will object, to a proposition conceived in fairness and justice like this? How can you pass this bill, with this commission of boundaries, excluding New Mexico, without denying to New Mexico the justice you are so anxious to award to Texas?

But, sir, bring New Mexico into the Union, and you will no longer have any need of a commission at all. The Constitution and the laws of the United States provide a remedy for the settlement of this question, without the interposition of the executive arm of the United States, and without any commission whatever, and without any delay. Texas will find a respondent whenever she chooses to file her bill in the Supreme Court of the United States, to assert a claim to the territory in dispute; and New Mexico, before that august tribunal, will maintain an attitude of equality and independence. There the law of the land will regard her as equal to Texas, equal in position even to the United States themselves. Here, her representative, appointed by herself, is seen only, as he presents himself unobtrusively in the lobbies and corridors of the capitol—refused admission by the House of Representatives as a delegate. In the Supreme Court, New Mexico

would be an acknowledged party, allowed to speak for and defend herself. Senators, the fact is before you; it is known to you, confessed by you, and acknowledged to the world; it has been acknowledged in this very debate to-day, that the people of New Mexico are on their way here with a constitution, borne by two senators and one representative, to lay open their rights and their wrongs before you. You, on the other hand, are consuming the long hours of this day and of every day, in hastening the passage of this bill, in endeavoring to anticipate the arrival of New Mexico by the passage of this bill, in order that you may tell her the door was shut before she came.

This is the justice, this the magnanimity of the United States of America. This is the magnanimity which is shown to a conquered, a defenceless, and a harmless people. Sir, there is not in the history of the Roman Empire an ambition for aggrandizement so marked as that which has characterized the American people. There is not in its whole history a transaction so unjust to a conquered people as this. But what is the apology for it? Is there any need or cause for such intemperate haste, such violent haste? The question we are upon is not about New Mexico. It does not concern New Mexico. New Mexico is a stranger to it. The question really before us, from the beginning, has been, not the settlement of the boundary of New Mexico, but the right of California to be admitted into the Union. Detach, then, this question of New Mexico and her boundary from the bill, and leave the bill to contain only its legitimate subject, that of California alone. You will thus secure New Mexico a right to be heard. Having heard her, if you pronounce against her, she must submit, because from that decision there can be no appeal.

But another apology is offered for violating the rights of New Mexico. You desire to preserve peace, to prevent civil war on the banks of the Rio Grande. But how can you preserve peace by such a measure as this? You exclude New Mexico from the commission. You deny her a hearing. You reject her constitution, even before it is presented. All this you do now. After the lapse of a year, or two or three years, your commission will come back, bringing with it all the excitement of this hour, with excitement increased beyond your control, by new and additional injustice. Sir, those who make peace in this way, are like him

> "Who stems the stream with sand,
> Or binds the flame with flaxen band

There will be no peace until, I do not say justice, but until a hearing is given to New Mexico. I repeat, that I know the Constitution of New Mexico is not here. It is not her fault, nor mine. It is enough that she has a constitution, a constitution of her own choice, and that the fact is known. It is well known. It is historical. Her constitution is known to the world, and just as well and as distinctly known to us as the constitution of any state in this Union. An election has been appointed to take the sense of the people of New Mexico upon adopting that constitution. My amendment provides for ascertaining officially whether it has been adopted; and it provides for admitting New Mexico as a state, as soon as the constitution thus adopted shall have been brought here and filed in the archives of the Department of State. Although it would be more regular to have that constitution before us officially, yet if the question must be whether New Mexico shall be admitted now, waiving the formality of authentic documentary testimony, or excluded forever, then I say, admit her now conditionally—upon her constitution, already known and adopted, being presented. No one can deny that if the commission proposed to be instituted shall be executed, that it will involve the imminent risk of the rejection of New Mexico forever, by reason of the absorption of the most important part of that territory and that community by the state of Texas.

Now, it is due to myself to say, that while I present this claim in behalf of New Mexico, it has not been my choice, nor my wish, to bring this great question into this bill, so called, of "compromise and adjustment." Even the admission of New Mexico as a state, under the circumstances, by this bill, would be in conflict with the arguments which I have used against it. But if the bill is to proceed and be passed with the amendment offered by the Senator from Maine, [Mr. Bradbury,] then I ask you to adopt my amendment for the protection and security of New Mexico. I do not seek to affirm or deny the boundaries of New Mexico, as she has defined them in her constitution. I do not desire to disturb the boundary question. My amendment leaves the boundary question to the commissioners, only providing that New Mexico shall be represented in the commission.

Nor do I intend to involve the fate of New Mexico in the fate of this bill. My proposition is only an amendment to the amendment of the Senator from Maine; and I shall in any event vote

against that and against the whole bill. But if it pass in the form contemplated by the Senator from Maine, New Mexico will be protected if mine is adopted. If, on the other hand, the bill shall be lost altogether, New Mexico will have lost nothing by means of the effort made by me in her behalf.

Several senators having spoken, Mr. SEWARD replied—

If there is any proposition I have ever made, any measure I have ever proposed, which I am willing to stand by here, before the country and before the world, it is the proposition I have now submitted. Therefore, though I stand alone, I shall be content, convinced that I stand right.

I do not propose to reply to what is personal in the remarks of the honorable Senator from Maryland. I have nothing of a personal character to say. There is no man in this land who is of sufficient importance to this country and to mankind, to justify his consumption of five minutes of the time of the Senate of the United States, with personal explanations relating to himself. When the senator made his remarks, I rose to express to him the fact that he was under a misapprehension. The speeches which I have made here, under a rule of the Senate, are recorded, and what is recorded has gone before the people, and will go, worthy or not, into history. I leave them to mankind. I stand by what I have said. That is all I have to say upon that subject.

The senator proposes to expel me. I am ready to meet that trial too; and if I shall be expelled, I shall not be the first man subjected to punishment for maintaining that there is a power higher than human law, and that power delights in justice; that rulers, whether despots or elected rulers of a free people, are bound to administer justice for the benefit of society. Senators, when they please to bring me for trial, or otherwise, before the Senate of the United States, will find a clear and open field. I ask no other defence than the speeches upon which they propose to condemn me. The speeches will read for themselves, and they will need no comment from me.

Mr. President, the objection which is made to the proposition which I have submitted to the Senate is this: That it may bring into the United States a royal or kingly government. Sir, here is the Constitution of New Mexico, sent to me by one who attended the convention of New Mexico. I have just as good evidence to satisfy me that this is the real Constitution of New Mexico, as I

had to satisfy me that the honorable Senator from Maryland had been elected a member of this branch of the legislature when I heard his credentials read.

Now, sir, I am prepared to answer the only argument of the honorable Senator from Maryland against the admission of New Mexico, which is, that the Constitution of New Mexico may be one creating a kingly government, if the honorable senator does not disdain to examine a constitution not officially laid before the Senate. It begins with these words:

"We, the people of New Mexico, in order to establish justice, promote the welfare, and secure the blessings of liberty to ourselves and our posterity:"

This, so far, is the language of the Constitution of the United States. Then it proceeds—

"Acknowledging with grateful hearts the goodness of the Sovereign Ruler of the universe, and imploring His aid and direction in its accomplishment, do ordain and establish the following Constitution:"

We see that here are a people who acknowledge a higher power than the Constitution.

These people of New Mexico then say they have "established a government for the purpose of establishing justice, securing the blessings of liberty for themselves and for posterity, and that they acknowledge the superintending power of the Sovereign Ruler of the universe, and invoke His blessing."

Now, let us see what kind of government they make. They form themselves into a free and independent state, by the name of New Mexico. The next question is, whether they have established a "kingly" government. This may be learned from their declaration of rights:

"All men being born equally free and independent, and having certain natural, inherent, and inalienable rights, amongst which are the enjoying and defending of life and liberty, the acquirement, possession, and protection of property, and the pursuit of and attainment of happiness: therefore, no male person shall be held by law to serve any person as a servant, slave, or apprentice, after he arrives at the age of twenty-one years; nor female in like manner, after she arrives at the age of eighteen years; unless they be bound by their own consent, after they arrive at such age, or are bound by law for punishment of crime.

"All power is inherent in the people; all free governments are founded in their authority; they have therefore an inalienable and indefeasible right to institute government, to alter and reform, or to totally change the same, when their safety or happiness requires it."

Well, sir, so far this is sound republicanism; it is the republicanism of the British Constitutions of 1640, of 1688, and the American Constitution of 1776. Well, have they established a

king, with an hereditary aristocracy to exercise the powers of government? No, sir: quite the contrary:

"The powers of the government of the state of New Mexico shall be divided into three distinct departments, and each of them confided to separate bodies of magistracy, to wit: Those which are legislative, to one; those which are judicial, to another; and those which are executive, to another.

"No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in those instances hereinafter expressly directed or permitted.

"The legislative powers of the state shall be vested in two distinct branches; one to be styled the Senate, the other the House of Representatives; and both together the Legislature of the State of New Mexico. The style of all laws shall be, *Be it enacted by the Legislature of the State of New Mexico.*

"The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their general election; and the session of the legislature shall be held annually, at such time as shall be prescribed by law.

"The senators shall be chosen by the qualified electors for the term of four years, and shall be divided by lot into two classes, as nearly equal as may be.

"The governor and lieutenant-governor shall be elected by the qualified electors of the state, at the time and places of choosing members of the legislature.

"The judges of the Supreme Court shall be appointed by the governor, with the consent of both houses of the legislature in joint ballot; and shall hold their offices for the term of six years, and until their successors be duly nominated and qualified."

"A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the legislature of this state to make suitable provisions for the support and maintenance of public schools.

"The legislature shall, at as early a day as practicable, establish free schools throughout the state, and shall furnish means for their support by taxation; and it shall be the duty of the legislature to set apart not less than one-twelfth of the annual revenue of the state, derived from taxation, as a perpetual fund, which fund shall be appropriated to the support of free public schools, and no law shall be made diverting said fund to any other use.

"Every male person at the age of twenty-one years or upwards, (Africans or the descendants of Africans, and uncivilized Indians, excepted,) belonging to either of the following classes, and who shall have resided in this state for six months next preceding any election, shall be a qualified elector at such election:

"*First.* Citizens of the United States residing in this state.

"*Second.* Persons who were elected to remain citizens of the Republic of Mexico according to article eighth of the treaty of peace, made and concluded between the United States of North America and the Republic of Mexico, at Guadalupe Hidalgo, and ratified by the Congress of the United States the thirteenth day of May, A. D. 1848, and who shall have taken, at least six months preceding any election, before some judge of the Supreme Court in this state, or before a clerk of any court of record in this state, an oath renouncing and abjuring all allegiance or fealty to the government of the Republic of Mexico, and to support the Constitution of the United States and of this state.

"*Third.* Persons of foreign birth, not referred to in the two preceding clauses, who shall have declared their intention to become citizens of the United States, conformably to the laws of the United States on the subject of naturalization.

"No soldier of the army of the United States shall be entitled to vote in this state."

This, then, is the Constitution of New Mexico. It is a republican constitution, and the argument of the Senator from Maryland against the admission of New Mexico is refuted.

INDEMNITIES FOR FRENCH SPOLIATIONS.

JANUARY 21, 1851.

While no lawful public engagement ought ever to be broken, debts founded on the appropriation of private property to the general use, and especially to the discharge of obligations incurred in the war of the revolution, are practically guarantied by the Constitution, and are stamped with a peculiar equity. They ought, therefore, to be held as sacred as the safety of the state itself. The claims before us fall within that class of inviolable obligations.

The peace of Paris, in 1763, reduced the broad possessions of France in America to Cayenne on the continent, and the islands of St. Domingo, Martinique, Guadaloupe, Marigalante, St. Pierre, Miquelon, Grenada, and Dominica, in the Atlantic ocean. Great Britain, at the same time, acquired the Canadas, together with the vast region of New France, and thus secured to herself an empire extending from the Gulf of Mexico to the Arctic circle.

In February, 1778, the new thirteen American states were struggling to disengage themselves from that empire. It was a conflict ripened and final between Great Britain to retain supreme dominion, and the United States to acquire absolute sovereignty and independence. Great Britain, so lately victorious over her great continental rival, was now confessed mistress of the seas. The United States had, then, a free population scarcely surpassing their present number of slaves. Their sovereignty had been assumed only nineteen months before, and had not yet been recognized by any foreign nation, nor even by the least of the hundred savage tribes whom the wilderness protected within and around their borders. They had no navy, mercantile marine, fortifications, constitution, nor even confirmed confederation. The hopes which had been kindled by early successes were almost extinguished by

recent and successive disasters. Boston had, indeed, been regained, and Burgoyne had given back the passes of the north; but the enemy yet retained New York, and now victorious over Washington in successive pitched battles, on fields chosen by himself, on the Brandywine and at Germantown, was marching unobstructed toward Philadelphia, then the American capital. The precious metals seemed to have hidden themselves again in the earth, and paper credits had everywhere collapsed. The chaplain of Congress implored Washington "to give over the ungodly war in which he was engaged." The discomfited army, without recruits, pay, or even sufficient food, had tracked their way with bleeding feet into winter quarters on the Schuylkill. Two hundred officers had resigned and retired; the hospitals and the neighboring farmers' firesides were crowded by soldiers without blankets or shoes; and the great leader, in the midst of discontents fast growing into mutiny, announced to the loosely constituted legislature, which was now convulsed with distrust and faction, that "unless some great and capital change should occur, the troops under his care must starve, dissolve, or disperse."

A great and capital change did occur. Allied armies, fresh, vigorous, and well appointed, co-operating with a gallant fleet, met the invader, and his surrender at Yorktown opened the way to peace, sovereignty, and independence. An auspicious star had led Franklin, Deane, and Lee, the first of American ambassadors, to Paris; and it was an alliance with France, a hereditary foe, but thenceforth a fraternal nation, that wrought out this great and capital change, and effected that triumphant consummation.

The courses of the allies immediately separated, and thenceforward widely diverged. The United States completed their Union in peace and tranquillity, and established their constitution on the unremovable foundations on which loyal citizens hope, and wise men throughout the world believe, that it stands firmly fixed forever; while, by well-directed devotion of the national revenues to the payment of their debts and the establishment of their credit, and a wise cultivation of arts and industry, they prepared the way for permanent and extended empire.

France, on the contrary, began the descent toward revolution in the very year when the United States emerged from its dangerous labyrinths; and thereafter, distracted herself, for thirteen years she convulsed all Europe.

It was during this period that these claims for indemnities for spoliations arose.

The political and commercial relations between France and the United States had been defined by treaties.

First. The Treaty of Amity and Commerce, the most ancient treaty of the United States, executed on the 6th of February, 1778. It stipulated [Art. 1] a firm, inviolable, universal, and perpetual peace. [Art. 2.] That all commercial privileges to be granted by either party to any state should become common to the other contracting party. [Arts. 3 and 4.] The most favored footing for each party in the other's ports. [Arts. 5 and 6.] Reciprocal protection to vessels in their respective jurisdictions. [Art. 8.] The aid of France in negotiations by the United States with the Barbary powers. [Art. 12.] The mutual exhibition of passports and certificates of cargo in cases of suspicious vessels making the ports of an enemy of one of the parties. [Art. 14.] That goods of either party should be forfeited if laden in ships of an enemy of the other. [Art. 17.] That armed vessels of one party might freely carry prizes into the other's ports, without paying duties to courts, and might freely depart to the places designated in their commissions, and that neither party should give shelter to captors of prizes from the other. [Art. 22.] That privateers of an enemy of one party should not be allowed to be fitted out or to sell prizes in the ports of the other. [Art. 23.] That free ships should make free goods. [Art. 24.] Defined articles contraband of war, and excepted from that class many articles not free by the law of nations. [Art. 25.] In case one party should be at war, the vessels of the other should be furnished with sea-letters, or passports, and with certificates containing the particulars of the cargo, so as to relieve the rigors of search.

Secondly. The Treaty of Alliance, concluded on the same day, February 6, 1778. In this treaty, the parties recited the execution of the Treaty of Amity and Commerce, declared that they had considered the means of strengthening their engagements, particularly in case Great Britain, in resentment against those engagements, should break the peace with France, either by direct hostilities, or by hindering her commerce and navigation, contrary to the rights of nations and the peace subsisting between those countries; and that therefore they had agreed, that [Art. 1] if war should break out between France and Great Britain during

the continuance of the existing war between the United States and England, that then his Majesty and the United States would make it *a common cause*, and aid each other mutually with their good offices, their counsel, and their forces, as was becoming to good and faithful allies. [Art. 2.] That the essential and direct end of their defensive alliance was to maintain effectually the liberty, sovereignty, and independence, absolute and unlimited, of the United States of America, as well in matters of government as of commerce. [Arts. 3 and 4.] That each party should make every effort to attain that end; and that they should, in every possible way, act in concert, and with promptness and good faith. [Arts. 5, 6, and 7.] That France renounced, in favor of the United States, conquests that might be made by the allied armies, except the British islands in or near the Gulf of Mexico. [Arts. 8 and 9.] That neither party should conclude a truce or peace without the other's consent; and that neither party should demand any compensation from the other. [Art. 11.] The two parties guarantied mutually, from the date of the treaty, forever against all other powers, to wit:—the United States to his Most Christian Majesty the then existing possessions of the crown of France in America, as well as those it might acquire by the treaty of peace. And his Most Christian Majesty, on his part, guarantied to the United States their liberty, sovereignty, and independence, absolute and unlimited, and also their possessions, and the additions or conquests that the confederation might obtain during the war, conformably to the 5th and 6th articles. [Art. 12.] In order to fix more precisely the application of the preceding article, the contracting parties declared that, in case of a rupture between France and England, the reciprocal guaranty declared in that article should have its full force and effect the moment such rupture should break out; and if such rupture should not take place, the mutual obligations of the said guaranty should not commence until the moment of the cessation of the war then existing between the United States and England should have ascertained their possessions.

Thirdly. The Treaty called the Consular Convention, concluded on the 14th of November, 1788, containing the following articles:

"ART. 8. The consuls or vice-consuls shall exercise police over all the vessels of their respective nations; and shall have, on board the said vessels, all power and jurisdiction in civil matters, in all the disputes which may there arise. They shall have an entire inspection over the said vessels, their crews, and the changes and substitutions therein to

be made; for which purpose they may go on board the said vessels whenever they may judge it necessary."

"ART. 12. All differences and suits between the subjects of the Most Christian King in the United States, or between the citizens of the United States within the dominions of the Most Christian King, and particularly all disputes relative to the wages and terms of engagement of the crews of their respective vessels, and all the differences, of what ever nature they be, which may arise between the privates of the said crews, or between captains of different vessels of their nations, shall be determined by their respective consuls. The officers of the country, civil or military, shall not interfere therein, or take any part whatever in the matter; and the appeals from the said consular tribunals shall be carried before the tribunals of France or of the United States."

The French Revolution began in 1789, and in 1793 it became a general European war, in which France, while treading continually upon the fiercest internal fires, bared her head to all the thunderbolts of despotism.

Washington, by the serene tranquillity and majestic justice of his character, repressed the sympathies of the United States for France and the republican cause, and sent forth his memorable proclamation: "Whereas," said the President, "it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France, on the other, and the duty and interest of the United States require that they should, with sincerity and good faith, adopt and pursue a conduct friendly and impartial towards the belligerent powers, I have therefore thought fit, by these presents, to declare the disposition of the United States to observe the conduct aforesaid."

No less a character than Washington could have assumed neutrality in such a crisis. Nor could even he protect it in that fierce conflict of armed opinion which raged throughout Europe, as if all its separate and widely different states had been one entire yet distracted commonwealth. The cost of supplies rose two, three, and four-fold, under the demands of the belligerent nations. The United States put in motion, for once, and all at once, the three wheels of industry—Production, Manufacture, and Exchange—and wealth flowed in upon them like a spring-tide. The combatants, relapsing into the morality of the Barbary powers, seized and confiscated neutral ships and their cargoes. American commerce was thus suddenly checked, and the revenues it yielded rapidly declined. Jefferson, then Secretary of State, met the emergency with a declaration—

"I have it in charge from the President to assure the merchants of the United States concerned in foreign commerce or navigation, that attention will be paid to any injuries they may suffer on the high seas or in foreign countries, contrary to the law of nations

or to existing treaties; and that, on their forwarding hither well-authenticated evidences of the same, proper proceedings will be adopted for their relief."

The American merchants, thus stimulated, prosecuted more diligently than before a trade which yielded enticing profits, while its risks seemed to have been underwritten by their country. The maritime injuries suffered by Americans at the hands of France in the course of the war, were at the time classified as follows:

First. Spoliations and mal-treatment of the vessels of American citizens at sea, by French ships of war and privateers.

Second. A long and distressing embargo, which detained many American vessels at Bordeaux in 1793 and 1794.

Third. The dishonor of bills and other evidences of debt due to American citizens for supplies furnished, at the request of France, to herself and to her West India Islands, in a period of famine and civil war.

Fourth. The seizure or forced sales of the cargoes of American vessels, and the appropriation of them to public uses.

Fifth. The non-performance of contracts for supplies, made by the French authorities with American citizens.

Sixth. The condemnation of American vessels and cargoes under marine ordinances of France incompatible with treaties.

Seventh. Captures, in violation of the provisions of the commercial treaty, of American vessels laden with provisions, bound to the ports of the enemy.

To elucidate the nature of these injuries:

On the 9th of May, 1793, France authorized armed vessels and privateers to arrest and bring into her ports neutral ships, laden wholly or in part either with provisions belonging to neutral nations and destined to an enemy's ports, or with merchandize belonging to an enemy, and declared that such merchandize should be lawful prize, while such provisions should be paid for according to their value at the place of destination, and just indemnification should be made for the freights and the detention of the ships. This decree was alternately rescinded as to the United States, restored, rescinded again, and finally restored and left in full effect.

American vessels known and confessed, but found without passport or certificate, in the exact form prescribed by the 22d article

of the Treaty of Amity and Commerce, were, by a decree of the 3d of March, 1797, declared lawful prizes.

On the 2d of July, 1796, France decreed that she would treat neutral vessels, either as to confiscations, searches, or captures, in the same manner that they suffered the English to treat them—a decree that punished with violence the endurance of aggression committed by another, while it confided in the discretion of the second corsair to determine who, by having become victims of the first, had offended against so extraordinary a code.

On the 29th of October, 1799, France decreed that any native of an allied or even of a neutral country, found wearing a hostile commission, or serving in an enemy's crew, should suffer as a pirate, without being allowed to allege duress, by violence, menace, or otherwise.

Besides one hundred and three vessels which were detained by the embargo at Bordeaux, there is a list of six hundred and nineteen which were captured and plundered before 1800. The true number of spoliations is said to have been three times greater. Cotemporaneous expositions by the authorities of the United States placed the aggregate of damages sustained by the merchants at more than twenty millions of dollars. Of these damages, portions amounting to about ten millions of dollars, were adjusted and paid chiefly under the convention of 1800, finally carried into effect by the Louisiana treaty in 1803. The exact amount of damages due, however, is not now in question. The bill before the Senate confines itself to unadjusted claims to be actually proved, and awards only five millions, without interest, in satisfaction of all that shall be established.

The United States diligently prosecuted the claims from 1793 to 1800, but France did not so long remain a mere respondent.

Edmund C. Genet, her minister, claimed, and actually assumed to fit out privateers in American ports, to cruise against British vessels. Under the 22d article of the Treaty of Amity and Commerce, he demanded what, in fact, were admiralty powers, for French consuls in American ports, by virtue of article 8th of the Consular Convention; while, under color of the 17th article of the Treaty of Amity and Commerce, he insisted that French vessels had a right to sell their prizes free from all duties in American ports; and, finally, he complained that British ships were permitted to take French goods out of American vessels, while a

reciprocal right was denied to the French marine. All these complaints, however, were disallowed, upon grounds which will not now be questioned.

Nor were the relations between the United States and Great Britain less disturbed. Besides having offended earlier and more flagrantly than France against our neutrality, Great Britain still, in violation of the Treaty of Independence, held the military posts on our western frontiers, and through them, the control of the disaffected Indian tribes; nor did she seem unwilling, amidst our domestic distractions, to provoke a new trial of our ability to maintain the independence she had so reluctantly confessed. While John Jay opened negotiations with Great Britain, at London, James Monroe, at Paris, assured the French Directory that Mr. Jay's object was to obtain compensation for spoliations, with an immediate restitution of the western posts; and that he was positively forbidden from weakening the engagements existing between the United States and France. These assurances were effectual. Early in 1795 the French Directory decreed that the Treaty of Amity and Commerce should thenceforth be strictly observed, and provided for indemnifying those who had suffered by the embargo at Bordeaux; and Mr. Monroe began a dispatch with announcing that a satisfactory arrangement of the claims for spoliations was at hand. But he closed the communication with a statement, that the ground thus happily gained had been suddenly lost, by reason of rumored stipulations injurious to France in the British treaty just then signed at London.

A cloud of political mystery gathered upon this compact from the day of its execution, the 19th of November, 1794, until it was finally promulgated on the 9th of May, 1796. France complained of this concealment as disingenuous; and she ever afterwards maintained that the United States had not merely violated their engagements with her, but had even abandoned, also, their professed neutrality, by relinquishing the principle that free ships made free goods, and by giving to England a too favorable standard of contraband. She therefore pursued her depredations more recklessly than before, and with the avowed purpose of compelling the United States to break their new engagements with Great Britain, her ancient and most inveterate enemy.

Mr. Monroe was replaced by Charles Cotesworth Pinckney, but France now refused to receive or recognize a minister. A new

and august commission was instituted, consisting of Mr. Pinckney, John Marshall, and Elbridge Gerry, who, after enduring many insults and baffling many intrigues, returned to the United States. The United States, apprehending war with not only France, but Great Britain also, laid the foundations of their present systems of military and naval defence; and the controversy with the former power ripened into resistance, reprisal, and retaliation. After two years had thus passed, and after the French Directory had consented to negotiate, Oliver Ellsworth, William R. Davie, and William Vans Murray, proceeded to Paris as ambassadors. They found France just entering the fourth act of the drama of her Revolution—the consulate of the youthful conqueror of Italy. The American ministers demanded indemnities for the spoliations, as a *sine qua non*. The French ministers, at whose head was Joseph Bonaparte, readily yielded this condition, but insisted at the same time on a recognition and renewal of the ancient treaties, with national damages for the violation of them, as a *sine qua non* on their part. The Americans, in vain, resisted long and strenuously the pretensions of the French ministers, viz:

"That the treaties which united France and the United States are not broken; that even war could not have broken them; but that the state of misunderstanding which has existed for some time between France and the United States, by the act of some agents, rather than by the will of the respective governments, has not been a state of war, at least on the side of France."—*Rep. Sec. State*, 1825-'26, Doc. 108, page 616, No. 371.

But our ministers were finally constrained, by principles of public law, and the inflexible adherence to them by the French ministers, to yield the point, and admit that the treaties were still in force—and then they proposed to purchase with large sums of money a release from their most embarrassing stipulations.—*Rep. Sec. State*, 1825-'26, Doc. 108, page 631, No. 380.

They offered ten millions of francs for a release from the article of guaranty, and three millions of francs for a reduction of the privileges granted to France by the 17th article of the Treaty of Commerce, to such as were allowed by the United States to the most favored nation. France rejected all such overtures, and the commissioners, respectively, receding from their extreme demands, concluded an accommodation by which the United States secured compensation for the plunder of vessels not yet condemned, together with payment of the claims founded upon contracts, and also a satisfactory designation of articles contraband of war. The claims for spoliations in cases where condemnation had

already passed, the original *sine qua non* on our part, together with the reciprocal claims of France for national indemnities, and for a recognition and renewal of the ancient treaties, the original *sine qua non* on the part of France, were reserved by the following article:

"ART. 2. The Ministers Plenipotentiary of the two parties not being able to agree at present respecting the Treaty of Alliance of the 6th of February, 1778, the Treaty of Amity and Commerce of the same date, and the Convention of the 14th of November, 1788, nor upon the indemnities mutually due or claimed, the parties will negotiate further on those subjects at a convenient time; and until they have agreed upon these points, the said Treaties and Convention shall have no operation, and the relations of the two countries shall be regulated as follows."

The United States amended the new compact by striking out this second article altogether, and by adding a new one which limited its duration to eight years.

Bonaparte, First Consul, accepted the amendments, with an explanation, in these words:

"*Provided*, That by this *retrenchment* the two states renounce their respective pretensions which are the objects of the said (second) article."

The United States assented, and the compact was ratified as thus mutually amended.

This is the convention of 1800. "The pretensions" which France thus relinquished, were claims for indemnities for violations of the ancient treaties by the United States, together with a continuance and a renewal of those treaties; and the "pretensions" which the United States thus renounced, were the claims for indemnities for spoliations upon the property of American merchants, which are the subjects of the bill now before the Senate of the United States.

Mr. President, this review discloses—

First. That on the 6th day of February, 1778, and on the 14th day of November, 1788, the United States and France entered into reciprocal, political, and commercial engagements, mutually beneficial.

Secondly. That, previously to the 30th of September, 1800, France violated her engagements by committing depredations, in which merchants, citizens of the United States, sustained damages to the amount of twenty millions of dollars, of which, after allowing all claims adjusted, there still remains the sum of ten millions of dollars, exclusive of interest.

Thirdly. That the United States negotiated with France for pay-

ment of those damages, and also for a release from their ancient obligations; and that France conceded the claims for damages, but demanded national indemnities for a violation of the treaties by the United States, and also a continuance and renewal of them.

Fourthly. That the United States renounced their claims for damages due to their citizens, in consideration of a release by France of the treaties, and of her national claims for damages.

Fifthly. That thus the United States confiscated ten millions of private property of their citizens, and applied it to the purchase of *national* benefits, under a constitution which declares that private property shall not be taken for public uses without just compensation to its owners.

It seems to result from these facts, that the United States became immediately liable to pay to the American merchants the sums before due to them by France; and as this obligation was assumed by the United States in lieu of their ancient engagements with France, undertaken to secure the establishment of the national liberty and independence, it becomes in equity invested with their sacredness and sanctions, and therefore ought to be regarded as a debt incurred for the attainment of the sovereignty, liberty, and independence of the United States.

Why, then, Mr. President, shall not this debt, so ancient, and apparently so sacred and so just, be discharged?

I proceed to review the reasons which have been at various times assigned.

First. *The intrinsic justice of the claims has been questioned.*

The very learned and justly distinguished Senator from Missouri, [Mr. Benton] in a former debate, stated that France had justified these spoliations, on the ground that the ships seized were in part laden with goods belonging to Englishmen, who had borrowed the names of Americans. I have not been able to find evidence to support such a pretension. On the other hand, the diplomatic language of the United States constantly claimed that the sufferers were American citizens. Sir, if these claims are spurious, then it must be true that either Ellsworth, Marshall, Pinckney, Monroe, Morris, Jefferson, Adams the elder, and Washington, were ignorant of the fact, or that they colluded to defraud France. Neither position can be true. The claims are therefore just.

An objection raised by the Senator from Virginia [Mr. HUNTER] falls under the same head. It is that the French government have a list or table of the claims submitted in 1803, which was presented by the American commissioners, and which shows that the French, as the Senator says, suppose that they paid, under the convention of 1803, all the claims of American citizens. I have this table before me. If the honorable Senator will refer to the treaty of 1800, he will find that it stipulated for the payment of the class specified in that table only—to wit: debts owing on contracts—and that the claims for the spoliations now in question were omitted expressly on the ground that they were excluded by the treaty of 1800. Here is the article of that treaty:

"The debts contracted by one of the two nations with individuals of the other, or by the individuals of one with the individuals of the other, shall be paid, or the payment may be prosecuted in the same manner as if there had been no misunderstanding between the two states. *But this clause shall not extend to indemnities claimed on account of captures or confiscations.*"—*Vol. VIII of Statutes at Large*, p. 180.

Then, what is left out of this table? Exactly that portion of the claims left out of the treaty, and which is the subject of the present bill.

Secondly. It has been objected in late years that *the claims belonged to speculators.* Certainly few of the sufferers survive, and soon all will have departed. But the claims are property; they were the property of those sufferers. As property they could be transferred and transmitted by assignment, will, and administration. These are only modes in which property is perpetuated; and this capability of being perpetuated is inherent in it, and is always rightfully and necessarily recognized and protected by all governments, with proper limitations. Individual property is the ballast of the state. Wo to the state that casts it overboard. That state is sure to drift away, and to break upon the rocks. But the allegation that speculators have purchased these claims is *denied*, while the bill protects the public even if it be *true.* None but a lawful assignee can take any benefit from the bill, nor can such an one receive in any case more than he actually paid for the claim.

Thirdly. *It is said that the evidences of the claims and of titles must necessarily be loose and inconclusive.*

However this may be, the fault does not rest with the claimants, while the losses resulting from deficiency of proof will fall upon

them. Moreover, they must produce legal evidence. The United States can justly ask no more.

Fourthly. *It is denied that the United States exchanged a release of the claims for a release of the ancient treaties.*

We have seen that in form at least the treaty of 1800 was such an exchange of those equivalents. It was understood to be such an exchange, in effect, when made.

Robert R. Livingston said:

"It will be well recollected by the distinguished characters who had the management of the negotiation, that the payment for illegal captures, with damages and indemnities, was demanded on the one side, and the renewal of the treaties of 1778 on the other; that they are considered as of *equivalent value*, and that they only formed the subject of the second article."—*Letter to Talleyrand*, April 17, 1802.

Napoleon, at St. Helena, declared—

"That the suppression of the second article at once put an end to the privileges which France had possessed by the treaties of 1778, and annulled the just claims which America might have had for injuries done in time of peace."—*Conversation with Gourgaud.*

Notwithstanding these and similar cotemporaneous expositions, it has been insisted here by two of my very eminent predecessors, [Mr. WRIGHT and Mr. DIX,] as well as by others, that this confessed form of the treaty was a mere diplomatic artifice; that the treaty was not an exchange of equivalents; and that the claims for spoliations were renounced because they could not be enforced, and not for an adequate and admitted consideration. Did Oliver Ellsworth and his colleagues combine to practice a diplomatic fraud upon France? Certainly not. Were they then circumvented? If we should grant that they were, there would yet remain John Adams, President in 1800, and Thomas Jefferson, President in 1801, and the Senate of those years, all equally compromited. Who will impeach their intelligence or their directness? Sir, upon whom shall we rely to vindicate our own less deserved and ephemeral fame, if we strike so rudely the monuments where these great names lie sleeping!

If the United States can plead fraud in this or any other case, how shall creditors or allies, individuals or states, learn to distinguish between obligations which we admit to be valid, and those which we claim a right to repudiate?

No, sir; we cannot raise such a defence. Nor could it be maintained. No one questions the sincerity of the United States in prosecuting these claims. France was equally sincere in admitting them, and in preferring her own. Even in her piratical de-

crees, she pleaded an overpowering pressure, and promised reparation:

"Being informed that some French privateers have taken vessels belonging to the United States of America, I hasten to engage you to take the most speedy and efficacious means to put a stop to this robbery."—*Mongé, Minister of Marine, to the Ordonnateurs of France*, March 30, 1793.

Thus France was ingenuous even in her agony of social convulsion.

"Although it [the treaty of 1778] is reciprocal upon the whole, some provisions are more specially applicable to the fixed position of the United States, and others have allusion only to the eventual position of France. The latter has stipulated few advantages—advantages which do not in any respect injure the United States, and the lawfulness of which no foreign nation can contest. *The French nation will never renounce them.*"—*M. Tallegrand to Mr. Gerry*, January 18, 1798.

The Convention of 1800 was then, in fact as well as in form, a treaty of equivalents. Can the United States impeach it now, on the ground of the *inadequacy* of the equivalent received. Certainly not, sir. It is too late; the parties are changed. The merchants' claims are just the same, whether you received an adequate equivalent, or exchanged their demands for an insufficient consideration.

Nevertheless, let us pursue the objection. You say that however intrinsically just the claims may have been, they were renounced because you could not collect them without resort to war. I reply, a just claim against a civilized state is never valueless. If the state is insolvent to-day, it may become able to pay to-morrow; if it refuse to be just to-day, it may become more just to-morrow. It is true that the United States were not bound to declare war for the claims, but it is equally true that they had no right to confiscate them without indemnity. Thus we have reached one of the main defences against these claims, viz:

Fifthly. *That the ancient treaties had become void as against the United States, and therefore the release of them by France in* 1800 *was valueless.*

This argument involves two propositions:

1. That France *flagrantly violated* those compacts.
2. That the United States *perfectly fulfilled* them.

1. That France flagrantly violated those compacts. The chief object of the treaties of 1778 was the establishment of the liberty, sovereignty, and independence of the United States, in the war of the Revolution, and forever afterwards. France fulfilled her guarantee in the Revolution. But the merit of that fulfillment

is denied. It was said by one of my predecessors, [Mr. Dix,] that France was not moved by generosity or sympathy in entering into the treaties, or in fulfilling them. Sir, a nation whose pride can condescend so far as to receive benefits, vindicates itself fully by the exercise of unquestioning and enduring gratitude.

Interest and ambition do indeed too often mingle with the purest and highest of human motives, not less of states than of individuals. But the character of motives must be determined by the character of the actions in which they result. In the strait of the Revolution, your agents applied for aid, not to the King of France only, but also to the Emperor of Germany, to the Kings of Spain and Prussia, and to the Grand Duke of Tuscany. From neither of them could they gain so much as a protest to discountenance the hire of mercenaries by the German princes to the King of Great Britain, to be employed with savage Indian tribes against us. But France yielded money, volunteers, recognition, and armed alliance. Was there no merit in that?

It is true, that in our oppressor France found a rival to humble and overthrow. But had Britain no other rival or enemy than France? If there were others, why did we not win them to our side? France did indeed exact a guarantee from the United States in exchange for her own. But did we find any other power willing to enter into such an exchange? Moreover, France conceded to us all the conquests which should be made by the allied armies, in the war of the Revolution, except such as would have been useless to us, and even including the Canadas, of which we had so recently assisted to deprive her; and she insisted on no remuneration after the war should end. Was there no magnanimity in that?

France was not actuated chiefly by ambition or revenge in making the engagements of 1778. The people, and even the court, were filled with enthusiastic admiration of the United States and of their cause. Fenelon had already educated even royalty in that cause, in the palace, and under the eye of the Grand Monarque. The court, the army, the navy, the rulers and the people of France, had no standard of a hero but Washington, no model of a philosopher but Franklin, nor of a state but the United States. Seventeen years ago I traversed the now deserted and desolate chambers of the Bourbons of France. Never shall I forget the grateful pride I felt when I found among the family

pictures of the House of Orleans one which commemorated the visit of Franklin to the Palais Royale, and among the illustrations of the national glory at Versailles, one that celebrated the surrender of Cornwallis. The failure of Louis XVI. as a king resulted from his attempting, like Nerva in ancient Rome, and Pio Nono in modern Rome, to combine those two incompatible things, the enlargement of popular freedom with the maintenance of regal power. Nor may we undervalue the aid received from France. It decided the contest. It cost her more than three hundred millions of dollars, and hurried her into a Revolution more exhausting than any other state, in the tide of time, has endured.

Thus it appears that France fulfilled faithfully and completely her chief engagements in the treaties of 1778, while it is admitted that she failed afterwards in less essential obligations, but with protestations of adherence and promises of reparation.

2. Did the United States *completely and absolutely fulfil* their reciprocal obligations? When the war of 1793 broke out, France held all the possessions in America which they had guarantied to her forever, and they were all exposed. Yet the United States never defended, nor attempted to defend them; never devoted a life nor even a dollar to that end. Thus, instead of standing on fulfilment, we are at once brought to the necessity of justifying a non-performance of the engagements. The justification has been placed on several grounds, viz:

1. That France did not demand fulfilment.

Such an inference is warranted by some of the papers before us, but there are others which leave the fact very doubtful.

"I beg you to lay before the President of the United States, as soon as possible, the decree and the inclosed note, and to obtain from him the Cabinet decision, either as to the guaranty that I have claimed the fulfilment of for our colonies, &c."—*E. C. Genet's Letter of November* 14, 1793.

But if France did not demand the performance of the guaranty in the war, she insisted on its obligation. The United States practically *disavowed* and renounced it. The proposition is self-evident. The treaty stipulated *alliance*, when France should demand it. The United States assumed *neutrality* in every event.

2. The non-performance by the United States has been justified on the ground that the *casus fœderis* of the stipulated guaranty was a defensive war, and that the war of 1793 was not of that character.

In reply to this argument, I observe, in the first place, that the *terms* of the Treaty of Alliance stipulated for the execution of the guaranty in the case of "war to *break out*:" Any war, offensive or defensive. But the Senator from Virginia [Mr. HUNTER] overpowers us with an argument which to me is irresistible. He says that *only a defensive* war must have been contemplated, because a stipulation for aid and alliance in an aggressive war would be immoral, unjust, and therefore void. Sir, I acknowledge that higher law of universal and eternal justice, to which the honorable senator refers. And I admit that all laws of states, and all treaties and compacts between states, which contravene its sacred provisions, are utterly void and of no effect. I accept therefore the senator's definition of the *casus fœderis;* that it was a defensive war. I controvert, and I rest my cause upon controverting, his assumption, that the war of 1793, between the allied powers and France, was on her part an aggressive, and not a defensive war.

The very proclamation of neutrality implied a denial of that assumption. The war therein described was a war "between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France, on the other." Why was the aggressor the last party to be named? But history has determined the character of the parties in that momentous contest.

"The first war of the French Revolution," says Wheaton, in his History of the Law of Nations, "originated in the application by the allied powers of the principle of armed intervention to the internal affairs of France, for the purpose of checking the progress of her revolutionary principles and the extension of her military power." War was declared, indeed, by France, but only as a reply to the ultimatum of a restoration of despotism tendered by the armed league of enemies.

Thus, sir, we have arrived at the true ground of defence of the neutrality of 1793, to wit: that performance of the treaty was impossible.

Sir, in a *practical sense*, performance was impossible. First, on account of the condition of France. The parties in 1778 of course expected that France would remain an organized state, capable of conducting combined operations under the treaty, upon a method and toward an end, without danger from herself to her ally. But it was not so with France. She became not merely revolutionary,

but disorganized, having no certain and permanent head, no stable and effective legislature. All the organs of the state were shattered, broken, and scattered. "*Nec color imperii, nec frons erat ulla Senatus.*"

The king, after unavailing changes of ministry, convened the assembly of the notables. After holding the bed of justice, and after attempting to establish the new plenary courts, he called the states general, which soon became a constituent assembly, absorbing all the functions of government. Suddenly the people of Paris rose, and brought the king, queen, and assembly into captivity. A constitutional monarchy rose under the dictation of the people; but the king was degraded, condemned, and executed, and a republic appeared. The republic went down before the power of cabals, which rapidly succeeded each other, all sustaining their administrations, throughout a reign of terror, by the tribunal of blood. These unnatural convulsions could have but one end—the restoration of the state by a dictator. That magistrate, in 1800, appeared in the person of Napoleon. When and where, before that event, could the United States have been required to go to the aid of France? It was well that France had regained her liberty; but her ally had a right, before going into a war with her against Europe, to see that liberty combined with government and with public force—with national morality, with social order, and with civil manners. All this was wisely deemed by Washington necessary to secure the United States against absolute danger, and to render their alliance at all useful to France. For, on what side were the United States to array themselves? With the king while he yet held the reins of state, or with the National Assembly while abolishing the monarchy? With the ephemeral directories, which governed France through the guillotine, or with the counter-revolutionists, struggling to restore internal peace and repose? Well did Mr. Jefferson say, that if the United States had panted for war as much as ancient Rome—if their armies had been as effective as those of Prussia—if their coffers had been full and their debts annihilated—even then, peace would have been too precious to be put at hazard, in an enterprise with an ally thus deranged and disorganized.

And what was the condition of the United States, that they should have periled all in the domestic rage of France and her foreign strife? Mr. Jefferson was no false interpreter, and he thus de-

scribed it. "An infant country deep in debt, necessitated to borrow in Europe—without a land or naval force—without a competency of arms and ammunition—with a commerce connected beyond the Atlantic—with the certainty of enhancing the price of foreign productions, and of diminishing that of our own—with a constitution little more than four years old, in a state of probation, and not exempt from foes." No greater calamity than war could then have fallen upon the United States, nor could war, in any other case, ever have come in a form so fearful. It was not a fault of Washington, as it was of Cato, not to see that public affairs were incapable of perfection, and that states could not be governed without submitting lesser interests to greater. On the contrary, the measure of his duty was that of Cicero in the consulship—to take care that the republic should suffer no detriment. Well and wisely did he perform that duty. He could not aid France, but he saved his own country. Forever, then, let the justice and the wisdom of Washington, in that memorable crisis, stand vindicated and established.

But what does all this prove? Just this, and no more: That circumstances, affecting France and the United States equally, unforeseen and imperious, prevented the United States from even undertaking to perform their compact with France, in the way stipulated in a particular emergency. But the circumstances creating this impossibility were not alone the fault nor the misfortune of France, but arose in part out of their own condition: and the omission to perform their agreement assured the safety and promoted the welfare of the United States. Under such circumstances, the United States owed to France, if not indemnities for past non-performance, at least recognition and renewal of the ancient treaties. If, then, France was held by the treaties, because the United States excused their non-performance, they were equally bound to extenuate her deviations, under such a pressure, from prudence, order, and even from justice, if she were willing to make reparation. None knew so well as they, that France broke the treaties in less essential obligations, not from want of virtue to be faithful, but from want of magistracy to enforce fidelity. But while France was always willing to make reparation, the United States insisted on being absolutely free from obligations. Jay's treaty was confessedly injurious to France. Either that treaty was necessary to the United States, or it was unneces-

sary. If it was unnecessary, the complaints of France were just. If necessary, then she was entitled to equivalents. A release from the engagements in the ancient treaties was necessary to the United States, or it was not. If it was not necessary, then the United States ought not to have bartered the merchants' claims away for it. If it was necessary, then the United States received an adequate equivalent.

Thus it appears that the ancient treaties had not lost their obligation against the United States by reason of any flagrant violation of them by France.

Sixthly. *The opponents of this bill next insist that the treaties had been abrogated by an act of Congress which was passed on the 7th day of July*, 1798, *viz.:*

"Whereas, the treaties concluded between the United States and France have been repeatedly violated on the part of the French government, and the just claims of the United States for reparation of the injuries so committed have been refused, and their attempts to negotiate an amicable adjustment of all complaints between the two nations have been repelled with indignity; and whereas, under the authority of the French government, there is yet pursued against the United States a system of predatory violence, infracting the said treaties, and hostile to the rights of a free and independent nation—

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the United States are of right freed and exonerated from the stipulations of the treaties and of the consular convention heretofore concluded between the United States and France, and that the same shall not henceforth be regarded as legally obligatory on the government or citizens of the United States."—*Statutes at Large, I*, p. 578.

The treaty-making power is vested, not in Congress, but in the President, by and with the advice and consent of the Senate. A valid treaty can be abrogated only by the power which is competent to make one. A treaty already void needs no act of Congress or of the President or of the Senate to abrogate it, while one not void cannot be abrogated except in the constitutional way.

A treaty, moreover, is the act of two parties. Neither can dissolve it without the concurrence of the other. The act of Congress, then, left the obligations of the ancient treaties, so far as France was concerned, and so far as the United States politically were concerned, just as it found them.

Seventhly. As a last resort, the opponents of these claims assert *that the release of the ancient treaties was valueless, because they had been abrogated by war between the two nations.*

I waive the objection that these treaties were of such a nature

that they could not be abrogated by war, and I simply deny that any such war occurred.

If war did take place, it must have begun in some way and at some time, and have ended in some other way and at some other time.

It is quite certain that France never declared war against the United States, and equally so that the United States never declared war against France. There were hostilities between them, but hostilities are not always war. The statute book of the United States shows the nature and extent of these hostilities.

We were not at war with France on the 14th of January, 1797; for on that day Congress declared it a misdemeanor for an American to engage in privateering against nations with whom the United States were at peace, and we know that France was then regarded as standing in that relation because the United States afterward authorized privateering against her in certain cases.

We were not at war with France on the 28th of May, 1798; for on that day Congress directed that a provisional army should be raised in the event of a declaration of war against the United States, or of actual invasion of their territory by a foreign power, or of imminent danger of such invasion.

Nor were we at war with France on the 13th of June, 1798; for on that day Congress suspended commercial relations with France—a measure quite unnecessary, if war had already broken up that intercourse.

Nor were we at war on the 25th of June, 1798; for on that day Congress authorized American vessels to oppose and resist searches, restraints, and seizures, by armed vessels of France. Such opposition and resistance would have needed no sanction if committed in open war.

We were not at war with France on the 2d day of March, 1799; for on that day Congress authorized the President to levy and organize additional regiments, in case *war should* break out between the United States and a foreign European power.

We were not yet at war on the 20th of February, 1800; for on that day Congress directed that all further enlistments should be suspended, unless during the recess of Congress and during *the existing differences* (which existing differences the sequel will show were not war) between the United States and France, imminent danger of invasion of the territory of the United States by that

republic, should, in the opinion of the President, be deemed to have arisen.

Finally, we were not at war on the 30th of September, 1800; for on that day the then "existing differences" between France and the United States were adjusted by a convention, concluded on the basis that although, in the opinion of the United States, the aggressions of France would "well have justified an immediate declaration of war, yet that they had nevertheless been desirous of maintaining peace, and of leaving open the door of reconciliation with France, and had therefore contented themselves with preparations for defence, and measures calculated to protect their commerce."—*Instructions to American Ministers at Paris, October* 22, 1799.

Thus, sir, it is shown, that if a war existed, neither its beginning, nor its end, nor the way of either, can ever be ascertained, and that the United States were then profoundly ignorant of its existence. If any man in France, more than another, would have known the existence of such a war, that man was Napoleon Bonaparte. Yet we have seen that the music of this "soft and silken war" never reached the ear of the great Captain of France. For, in speaking of the spoliations, he described them as having been committed "in time of peace." It was not thus with the other enemies of France, while he was at liberty within her borders, nor has it been so that the countrymen of Washington, of Taylor, and of Scott, have conducted their campaigns in other conflicts.

It appears from this review that the treaties in question had been recognized always by both parties, and broken in parts by both, but under circumstances of excuse and palliation; and that they were therefore in force when the United States and France mutually agreed to extinguish them, on the condition of a release of the claims for indemnities. Of the value of that agreement, it is unnecessary to say more, than that without it the United States might have been held by the ancient treaty of alliance to have followed to some extent the varying fortunes of France through her wars during the consulate and the empire, until she found repose, from complete exhaustion, on the field of Waterloo.

No reason for rejecting these claims remains, except that they have not been paid heretofore. But mere lapse of time pays no debts, and discharges no obligations. There has been no release, no waiver, no neglect, no delay, by the creditors. They have been

here twenty-five times in fifty years; that is to say, they have appeared in their successive generations, before every Congress since their claims against the United States accrued. Against such claims and such creditors there is no prescription.

It is said, indeed, that the nation is unable to pay these claims now. I put a single question in reply: When will the nation be more affluent than now?

The Senator [Mr. HUNTER] says, again, that, if the debts are just, we should pay the whole, and not a moiety; and that if the claims are unjust, then the bill proposes a gratuity—that in the one case the appropriation is too small, and in the other too great. This is the plea of him who, I think it was in Ephesus, despoiled the statue of Jupiter of its golden robe, saying, Gold was too warm in summer, and too cold in winter, for the shoulders of the god.

Sir, commerce is one of the great occupations of this nation. It is the fountain of its revenues, as it is the chief agent of its advancement in civilization and enlargement of empire. It is exclusively the care of the federal authorities. It is for the protection of commerce that they pass laws, make treaties, build fortifications, and maintain navies upon all the seas. But justice and good faith are surer defences than treaties, fortifications, or naval armaments. Justice and good faith constitute true national honor, which feels a stain more keenly than a wound. The nation that lives in wealth and in the enjoyment of power, and yet under unpaid obligations, dwells in dishonor and in danger. The nation that would be truly great, or even merely safe, must practice an austere and self-denying morality.

The faith of canonized ancestors, whose fame now belongs to mankind, is pledged to the payment of these debts. "Let the merchants send hither well-authenticated evidence of their claims, and proper measures shall be taken for their relief." This was the promise of Washington. The evidence is here. Let us redeem the sacred and venerable engagement. Through his sagacity and virtue, we have inherited with it ample and abundant resources, and to them we ourselves have added the newly discovered wealth of southern plains, and the hidden treasures of the western coasts. With the opening of the half century, we are entering upon new and profitable intercourse with the ancient Oriental states and races, while we are grappling more closely to us the new states on our own continent. Let us signalize an epoch so important in

commerce and politics, by justly discharging ourselves forever from the yet remaining obligations of the first and most sacred of all our national engagements. While we are growing over all lands, let us be rigorously just to other nations, just to the several states, and just to every class and to every citizen; in short, just in all our administration, and just toward all mankind. So shall prosperity crown all our enterprises—nor shall any disturbance within nor danger from abroad come nigh unto us, nor alarm us for the safety of fireside, or fane, or capitol.

THE PUBLIC DOMAIN.

FEBRUARY 27, 1851.

Mr. PRESIDENT: The organization of the American Republic is a political anomaly. Ancient and modern states, rudely constituted within narrow limits, have aggrandized themselves by colonies and conquests, while passing through various revolutions of government. But the world has never before seen a state assume a perfect organization in its very beginning, and extend itself over a large portion of a great continent, without conquests, without colonies, and without undergoing any change of constitution.

The success of Portugal and of the Netherlands in planting profitable commercial colonies in the East Indies, in the fifteenth and sixteenth centuries, stimulated nearly all the European states to attempt to secure similar advantages, by exploring and appropriating to themselves portions of the New World, then known as the Western Indies. Spain, Britain, and France, divided between themselves nearly all North America. Each of these kingdoms, however, pursued a policy so rigorous as to hinder the growth of the colonies it planted.

The United States, in the Revolution of 1776, supplanted Great Britain in sovereignty over the region lying between the St. Lawrence and Louisiana, and stretching from the Atlantic coast to the banks of the Mississippi.

The conquering states, practically independent of each other, were embarrassed by conflicting boundaries. The controversy was magnanimously ended, by an agreement that each should release its claim of unappropriated territory for the common use and benefit.

New York led the way, and ceded her claims as well of "polit-

ical jurisdiction" as "of the right of soil," "to be and inure to the use and benefit of such of the United States as should become members of the Federal Alliance of the said states, and for no other use or purpose whatever."

Virginia claimed the broad region lying north-west of the Ohio, and relinquished it in 1785, with a declaration that it should "be considered as a common fund for the use and benefit of such of the United States as have become or shall become members of the Confederation or Federal Alliance of the said states, (Virginia inclusive,) according to their usual and respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for that purpose, and for no other use or purpose whatsoever."

Massachusetts soon afterwards released to the United States, "for their benefit, Massachusetts inclusive."

Connecticut conveyed, in 1786, in the same form.

South Carolina, in 1787, ceded, "for the benefit of the United States, South Carolina inclusive."

North Carolina, in 1790, conveyed by a deed containing the same declaration which had been used by Virginia; and Georgia completed the title of the United States, by a cession on the same terms, attended with other stipulations, which are not now important.

The Constitution of the United States, adopted in the course of this great transaction, sanctioned it as follows:

"The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."—*Art.* 14, *Sec.* 3.

The Continental Congress had previously adopted the ordinance of 1787, by which they established a government in the North-western Territory, and provided for its future subdivision into states. With a view to that great political purpose, the Constitution declared that "New states may be admitted by the Congress into this Union."—*Art.* 5, *Sec.* 3.

The purchase of Louisiana from France in 1803, the acquisition of Florida by a grant from Spain in 1819, the discovery of Oregon, and the recent purchase of New Mexico and Upper California, extended our domain along the shores of the Gulf of Mexico to the Rio Grande, and, from its head waters, across the Rocky

Mountains and the Snowy Hills to the Pacific ocean. The aggregate quantity of this national estate is fifteen hundred and eighty-four millions of acres; of which, one hundred and thirty-four millions have been definitely appropriated, and there remain, including appropriations not yet perfected, fourteen hundred and fifty millions of acres.

Using only round numbers, these lands are distributed among the states and territories as follows:

	Acres.
In Ohio	745,000
Indiana	2,751,000
Illinois	14,060,000
Missouri	29,216,000
Alabama	17,238,000
Mississippi	14,308,000
Louisiana	22,854,000
Michigan	24,864,000
Arkansas	27,402,000
Florida	31,801,000
Iowa	27,153,000
Wisconsin	26,321,000
Minnesota	56,000,000
Northwest Territory	376,000,000
Oregon Territory	218,536,000
Nebraska Territory	87,488,000
Indian Territory	119,789,000
California and Utah	287,162,000
New Mexico	49,727,000

The domain came to the United States encumbered with a right of possession by Indian tribes, which we are gradually extinguishing by purchase, as the necessities of advancing population require.

At the establishment of the federal government, the United States suffered from exhaustion by war, and labored under the pressure of a great national debt, while they were obliged to make large expenditures for new institutions, and to prepare for defence by land and by sea. They therefore adopted a policy which treated the domain merely as a fund or source of revenue. They divided it into townships, sections, and quarter-sections, and offered it at public sale, at a minimum price of two dollars per acre, on credit, and subsequently at private sale, on the same

terms. In 1820, they abolished the credit system, and reduced the price to one dollar and twenty-five cents per acre. In 1833, they recognized a right of pre-emption in favor of actual occupants; and the system, as thus modified, still remains in form upon our statute book. The United States, however, have, at different times, made very different dispositions of portions of the domain. Thus there have been appropriated to the new states and territories, for purposes of internal improvement, for saline reservations, for the establishment of seats of government and public buildings, and for institutions of education, as follows:

	Acres.
To Ohio	1,847,575
Indiana	2,331,690
Illinois	1,649,024
Missouri	1,793,748
Alabama	1,473,994
Mississippi	1,384,944
Louisiana	1,332,124
Michigan	1,674,598
Arkansas	1,489,220
Wisconsin	217,920
Iowa	46,720
Florida	1,553,635

Besides these appropriations, the Senate will at once recall several acts of Congress, which surrendered, in the whole, seventy-nine millions of acres for bounties in the Mexican war, bounties in the war of 1812, subsequent gratuities to the soldiers in the same war and in Indian wars, cessions of swamp lands to new states, and for the construction of a railroad from Chicago to Mobile, and other internal improvements, none of which last-named cessions have yet been located.

The aggregate of revenues derived from the public domain is one hundred and thirty-five millions three hundred and thirty-nine thousand ninety-three dollars and ninety-three cents, showing an annual average revenue of one and a quarter million of dollars since the system of sales was adopted.

Mr. President, I think the time is near at hand when the United States will find it expedient to review their policy, and to consider the following principles:

First. That lands shall be granted in limited quantities, gratuitously, to actual cultivators only.

Second. That the possessions of such grantees shall be secured against involuntary alienation.

Third. That the United States shall relinquish to the states the administration of the public lands within their limits.

These principles, sir, have no necessary connection. I shall therefore discuss them separately.

First. A gratuitous allotment of lands, in limited quantities, to actual settlers and cultivators only. This principle involves three propositions—

1. A limitation of the quantity which shall be granted to any one person;

2. Occupation and cultivation as conditions of the grant;

3. A gratuitous grant.

First. A limitation of the quantity to be allotted to any one person.

If the public lands were movable merchandize, price would be the principal, if not the only subject of inquiry. On the contrary, it is only the money received by the government on sales that perishes or passes away. The lands remain fixed just where they were before the sale, and they constitute a part of the territory subject to municipal administration as much after sale as before. The possessors of the land sold become soon, if not immediately, citizens, and they will ultimately be a majority of the whole population of the country, supporting the government by their contributions, maintaining it by their arms, and wielding it for their own and the general welfare. To look, then, at this subject merely with reference to the revenue that might be derived from the sale of the lands, would be to commit the fault of that least erected spirit that fell from heaven, whose

> "Looks and thoughts
> Were always downward bent, admiring more
> The riches of Heaven's pavement, trodden gold,
> Than aught divine, or holy, else enjoyed."

All will admit—all do admit—that the power over the domain should be so exercised as to favor the increase of population, the augmentation of wealth, the cultivation of virtue, and the diffusion of happiness.

I do not say that land in this or any other country ought to be,

or ever could be divided and enjoyed equally. I assert no such absurdity. But I do say, with some confidence, that great inequality of landed estates, here or elsewhere, tends to check population, enterprise, and wealth, and to hinder and defeat the highest interests of society. Every state in this Union recognizes this principle, and guards against undue aggregation of estates by restraints upon accumulation, by inhibitions of entails, and by dividing inheritances. A partition of this vast public domain is inevitable. It has been going on ever since the lands were acquired. It is going on now. And it will go on hereafter with increasing rapidity. That partition affords us an opportunity to apply the same beneficent and invigorating policy in a new and benign form, without disturbing any existing estates, or interfering with any vested interests, and without disturbing any established laws or customs.

There is no arbitrary measurement of the portion of land which one possessor can advantageously cultivate. Yet there are, practically, dimensions within which lands are held for that purpose; and when these are exceeded, the surplus is held for purposes of commerce or speculation. Commerce in the public lands, although by no means immoral, nevertheless ought to be regarded with jealousy. It diverts capital from active or productive industry, and prolongs the period before the land purchased can be made fruitful. Mortgages, judgments, and accidents of insolvency and of death, render the title uncertain and confused, and thus exclude the lands from market. Every one has seen in new countries extensive tracts of land upon which the speculator had laid his hand, and thus rendered them useless to himself, useless to the community, and useless or nearly so to the state. The want of some security against inconveniences so prejudicial to the states may now be supplied without producing any embarrassment to individuals or to the government.

Secondly. The same policy seems to commend the principle of insisting on permanent occupation and cultivation as conditions of a grant of any portion of the public domain. It ought to be kept open and available to those who seek it for cultivation. It ought therefore to be kept free from absent owners, who, while they would exclude settlers, would leave it entirely unproductive, and who would pay to the state either nothing, or at

most a tax that would poorly compensate for stamping sterility upon the soil.

The same principle that dictated the abandonment of the credit system in 1820, seems to prescribe now a limitation of the sales to actual settlers. Nor would the revenue derived from sales be affected by such a measure. The price of the land is fixed and uniform. If more lands are sold at one time under the present system than would be sold with such a limitation, a rest must follow, until the excess of land sold above the actual supply of the market shall be taken off at a profit or loss from the hand of the speculator. The commercial revulsion of 1837, aggravated by wild and reckless speculations in the domain, gave us instructions on this subject which ought not to be neglected.

The Senator from Michigan, [Mr. Felch,] who has discussed this subject with very great ability, dwells upon the difficulty of prescribing the evidence of occupancy and cultivation. But this difficulty would soon be removed if the system should be changed. A title might be withheld until improvements should be made sufficient to prevent a voluntary forfeiture.

Thirdly. The question of making the grants of public lands gratuitously is one of more difficulty. By gratuitous grants, I mean those which would be practically so, and that the lands thus disposed of should be charged with the costs of the grant.

The demand of one dollar and twenty-five cents per acre, or of two hundred dollars on a farm of one hundred and sixty acres, although it is not unjust, and although it may be necessary, is nevertheless, in its practical operation, a tax upon the privilege of cultivating the domain. But the first and fundamental interest of the republic is the cultivation of its soil. That cultivation is the sole fountain of the capital or wealth which supplies every channel of industry. The more it is taxed, the less freely it will flow. It is true, indeed, that, notwithstanding this tax, labor seeks the soil within the new states and territories, and that society advances there with a rapidity unparalleled. But it is equally true that the tax prevents the immigration of a very large mass of persons who are destitute of employment in the eastern states, while it rejects even a greater mass of cultivators in Europe. We are competitors with the European states in agriculture and in manufactures. They have the advantages of cheaper labor and greater capital. We ought therefore to invite here the labor necessary to

augment our productions, and the industry and skill required to prepare them for internal and foreign commerce. Can it be doubtful for a moment that it is our policy to bring the manufacturer to our own shores, and to invite the farmer to supply the wants of the artisan from our own unproductive lands?

Commercial supremacy demands just such an agricultural basis as the fertile and extensive regions of the United States, when inhabited, will supply. Political supremacy follows commercial ascendency. It was by reason of the want of just such an agricultural basis, that Venice, Portugal, and Holland, successively lost commerce and empire. It was for the purpose of securing just such a basis, that France, England, and Spain, seized so eagerly and held so tenaciously the large portions of this continent which they respectively occupied. It was for the purpose of supplying the loss of this basis, that England has, within the last seventy years, extended her conquests over a large portion of India.

We now possess this basis, and all that we need is to develop its capabilities as fully and as rapidly as possible. Nor ought we to overlook another great political interest. Mutual jealousies delayed a long time the establishment of the Union of these states, and have ever since threatened its dissolution. It is apparent that the ultimate security for its continuance is found in the power of the states established, and hereafter to be established, on the public domain. Those new and vigorous communities continually impart new life to the entire commonwealth, while the absolute importance of free access to the ocean will secure their loyalty, even if the fidelity of the Atlantic states shall fail. Such as these, sir, may have been some of the considerations that induced Andrew Jackson so long ago to declare his opinion, that the time was not distant when the public domain ought to cease to be regarded as a source of revenue. Such considerations may have had some influence with the late distinguished Senator from South Carolina, [J. C. Calhoun,] to propose a release of the public domain to the states, on their paying a small per centum of revenue to the United States; and we are at liberty to suppose that a course of reasoning not entirely unlike this, brought that eminent statesman, who is now Secretary of State, [Daniel Webster] to propose here, a year ago, a gratuitous appropriation of the public domain to actual settlers.

Nevertheless, the practicability of such a policy, and its harmony with other national interests, are as yet by no means generally admitted. The first objection which it encounters is the economical one, that it would be unwise to GIVE AWAY the public lands. But the property *given* would remain with the *giver after* the gift, and would be enhanced in usefulness by the gift. All that we should *give away* by surrendering the public domain would be the revenue that might be derived from sales. The honorable Senator from Michigan pathetically asks, what new fountain shall be opened to supply the deficiency, if this one be closed? And has it come to this, sir: that the federal government, charged with only the burdens of national defence, of commerce, and of arbitrament between the states, while absolutely relieved from all responsibilities of municipal and domestic administration, yet enjoying unlimited power of indirect as well as of even direct taxation, cannot sustain itself in a season of profound peace, without consuming the patrimony of the states? Sir, I answer the Senator's inquiry: The resource to supply the deficiency of a million and a quarter of dollars will be found in retrenchment of the expenses of administration.

A SENATOR. Will this government ever retrench? Does the Senator from New York expect this government to retrench?

Mr. SEWARD. No, sir; not while the revenue remains full. Reduce the revenue a million and a quarter, or even five millions, and you will find the expenses of the government accommodate themselves to the reduction. Raise the revenue to a hundred millions, and you will find the expenses adjust themselves to that standard. Sir, if you are ever to have retrenchment, you must begin with reducing taxation. And where can you begin so well as with the taxation upon the privilege of cultivating the national estate? But, sir, we shall have no such deficiency of revenue to supply. Alarms of an exhausted treasury are continually sounded here, while the revenues received under a system of imposts, which in many respects is most unwise, annually exceed all estimates of administration. Last year, the Secretary of the Treasury predicted a deficiency of sixteen millions of dollars, and yet no deficiency at all occurred. The revenues for the present year are equally prosperous; and they will never be less prosperous while we are at peace, as I hope we shall always be, for the wealth and industry of the country are constantly increasing and expanding

I know, indeed, that revenue is liable to be affected by fluctuations of trade; but such disturbances are only occasional and temporary.

The Senator from Michigan exaggerates the prodigality of what he calls the *giving away* of the domain, by stating that it cost seventy-five millions of dollars—equivalent to twenty-two cents per acre, or thirty-two dollars and twenty cents for each farm of one hundred and sixty acres. And from such premises as these he argues that it would cost thirty-five millions of dollars to give away the public lands lying in Wisconsin, Iowa, Michigan, Missouri, and Minnesota. Sir, I do not understand exactly the basis of the Senator's estimate of the cost of the domain, but I can nevertheless safely pronounce his speculations entirely fallacious. If the cost of the revolutionary war, the cost of the long controversy with France which ended in the purchase of Louisiana, the cost of all the Indian wars, and the cost of the late war with Mexico, all of which were in some degree connected with the acquisition of the public domain, should be included in the estimate, the entire cost of the public lands would be seven hundred millions, instead of seventy-five millions of dollars. If, on the other hand, the expense account be credited with all the national benefits—financial, commercial, and political—which have been secured, the domain would be discharged from all indebtedness whatever to the treasury.

Sir, the acquisition of the domain, whatever was its cost, is a transaction completed, ended, past. Its value is what it is worth now, not what it cost.

Mr. President, the question of such a disposition of the public lands as I have suggested is entirely misapprehended. It is not whether we shall relinquish a revenue of a million and a quarter. The revenue has ceased, and the fountain from which it flowed is dried up already.

We have by various acts, passed within the last ten years, given up seventy-eight millions nine hundred and thirty-two thousand five hundred and thirteen acres, which are now in market and coming into market, and which must be taken off from the hands of states and individuals before our own sales can be renewed. The Secretary of the Treasury assures us that the revenue from the public domain is suspended by this legislation for a period of sixteen years.

Sir, a revenue that is suspended for sixteen years has practically ceased forever. The Senator from Michigan, perplexed with this argument, reviews the treasury estimates, and reduces the period of exhaustion to eight years.

Sir, I say, then, to the Senator, that he has not changed the case. A national revenue that is suspended for eight years has practically ceased forever. But, sir, neither the Senator from Michigan, nor even the Secretary of the Treasury, has estimated the period of exhaustion at its full length. Congress is annually making new appropriations. The Senate has at this session passed an act disposing of ten millions of acres. We all hope that that act will become a law, although its effect would be to add at least five years to the term for which the revenue from the domain is suspended. Let us then apprehend the emergency as it is, and act accordingly. The domain no longer yields, nor will never again yield, a revenue. Since its financial benefits have ceased, let us no longer dispose of it by impulse and caprice, not to say by partiality or favor, but let us so dispose of it as to secure political and social benefits to the whole Union.

It is objected that the domain is pledged to public creditors. The debt charged upon the domain is $27,935,350—a debt which is rapidly diminishing, and, if we practice economy, will have disappeared, by the appliance of revenues from customs alone, long before the public domain will yield a dollar, for even the payment of the interest on it. But if it be necessary to hold the public domain liable for the debt, we may properly set apart sufficient lands for that purpose, and let the residue be disposed of as other interests require.

The Senator from Michigan resisted the policy proposed, on the ground that it would reduce the value of real estate in the new states. It has been urged that that inconvenience would also reach the old states. The inconvenience, Mr. President, if it should occur at all, would be merely temporary. The reclaiming of the domain would go on more rapidly; and we all know that cultivated as well as vacant lands rise in value just as rapidly as new lands lying amongst or adjacent to them are improved. What would be lost in the first instance, would be abundantly regained afterward.

There is, however, Mr. President, one objection of a more serious nature than any I have yet considered. I hear it said on

all sides, that the domain ought to be disposed of for great and beneficent objects—objects beneficial to the old as well as to the new states. Sir, I have always favored such a policy; and it is upon that ground that I have cheerfully voted hitherto, as I shall continue to vote hereafter, for appropriations upon that principle, so long as Congress shall continue to adhere even in form to the ancient system. It is upon this ground that I shall support the bill now under consideration, which proposes to bestow upon the state of Louisiana the public lands within her limits, to enable her to improve the navigation of the Mississippi—a policy that I brought before the Senate at the last session—a measure of great urgency, and of conceded national importance. I have had, moreover, a hope that this great resource might be applied to the establishment of a system for the gradual but certain removal of slavery, by a scheme of compensating emancipation. I have thought that the slaveholding states might wisely propose such a system, and that the free states ought to accede to it. But, sir, it is manifest that if the old states could not agree upon such a system, or even upon any other system of partition of the public domain among the states, or of distribution of its proceeds, while they held unquestioned the political power of government, they cannot now hope to agree upon and secure the adoption of such a system, when that power is actually passing over from them to the new states. The new states will control the decision of this great question. We may, nevertheless, by yielding to what is inevitable, modify the policy to be adopted.

I submitted, Mr. President, a second principle, to wit: that the public lands, so to be granted to actual settlers, ought to be secured to them against involuntary alienation.

I respect all lawful contracts, and I would not unnecessarily interfere with even rigorous remedies which existed when such contracts were made. But it is wise as it is just and humane, to alleviate prospectively the relations between debtor and creditor. Within the last twenty years, imprisonment for debt, a system which had prevailed for more than two thousand years before, has been safely abolished by every state in this Union, and I believe by every commercial nation in Europe. New York, the most commercial state, has with equal safety abolished the rigorous remedy of distress for rent, and has exempted certain portions of estates from liability to sale for debts contracted after such laws

were passed. Other states have adopted the policy of protecting the homestead from compulsory sale. A home is the first necessity of every family; it is indispensable to the education and qualification of citizens. Cannot society justly withdraw it from the hazards of commercial contracts, and from exposure to the accidents of disease and death? We bestow pensions upon decayed soldiers who have faithfully served their country in her wars; we protect such annuities against involuntary assignment; and the policy is as wise as it is generons. But he who reclaims an acre of land from the sterility of nature, and brings it into a productive condition, confers a greater benefit upon the state than valor has often the power to bestow. Sir, all that is movable in property may be used as a security for credits—and that security is adequate to supply all the wants of commerce. The home of the farmer, the asylum of the children of the republic, may be safely reserved and protected.

There remains, Mr. President, a third principle, which I think demands the consideration of Congress, which is: That the administration of the public lands within the states should be relinquished to them.

It has been sufficiently shown, that the United States can no longer derive any financial benefit from the domain. They can at best only hope to devote it to purposes of internal improvement and education. Experience has taught us nothing, if it has not shown that the action of Congress upon those interests is less judicious and beneficent than the action of the several states. Of all the railroads, canals, and other works of internal improvement —of all the universities, colleges, and schools, in the country, the states are, almost exclusively, the projectors, founders, and patrons. To maintain that the United States can select such objects, and apply the public lands to the attainment of them, more wisely than the states could do, is to controvert the principle of our Constitution, which assigns domestic interests and affairs to local administration. Sir, we have only a temporary jurisdiction and a temporary estate in the domain—both of which are of brief duration, and comparatively valueless. The reversion of both belongs to the states, and is infinitely important to them. It is not until that reversion has taken place that the domain really begins to contribute to the wealth and strength of the whole republic.

Nor am I greatly embarrassed by the objection that the new

states would derive an unequal share of the benefits from what is justly called a "common estate." If all the public lands lying within their limits were released to them, they would still be inferior to the older states in the advantages of capital, labor, and commercial position. Every dollar of revenue which we should release, would remain within the new states, enhancing their ability to construct channels of trade, and to found systems of education—while their own increasing wealth and prosperity would equally increase the wealth and prosperity of the old states, with whom they are intimately related and indissolubly connected.

The Senator from Michigan is alarmed with apprehensions that the simplicity and certainty of titles would be put in jeopardy, by a transfer of the public lands to the states. But, sir, our machinery of title, which is so perfect, could be at once transferred to the states, and they could operate it with increased efficiency, and with economy, which is unknown to us. No one could defend for a moment the principle that the Federal Government ought to retain the domain, with all its expenses of administration, for the mere purpose of conferring titles in it, upon the citizens of the states.

The possession of the domain, moreover, creates relations of landlord and tenant, of patronage and dependency, between the government and the states, injurious to both. This has been an inconvenience hitherto unavoidable, and it ought to be continued no longer than shall be required by a paramount national interest.

I shall consider, Mr. President, very briefly, the power of Congress in the premises. So far as the constitution is concerned, I shall pass by all commentaries and all glosses, and take my stand upon the simple text—"The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory and other property belonging to the United States." The power of disposition thus conferred is general, unlimited, absolute. It is the same power that Congress has to dispose of forts, magazines, arsenals, edifices, or ships. They have power to sell. They have power to give. Of course the power should be exercised in this as in all other cases, for the best interests of the nation, but the discretion of Congress is not abridged.

Let us now examine the supposed limitations in the deeds of

cession; for the rights of the states are secured by the Constitution. There are several grants which, it has been seen, are expressed in different forms. It is not the form employed in any one of the grants, but the general spirit and effect of them all, that explain and define the power conveyed. New York, Massachusetts, and Connecticut, release, by language broad and comprehensive. They conveyed "for the benefit of the United States."

Virginia and other states amplified, but manifestly for the purpose of expressing the same meaning more fully. They granted "for the use and benefit of the United States," and declared that the estate and jurisdiction conferred should "be considered as a common fund of all the states, according to their usual respective proportions in the general charge and expenditure, and should be faithfully and *bona fide* disposed of for that purpose, and for no other purpose whatsoever." This language was adopted with reference to the then existing articles of confederation, under which the states were charged with contributions for the support of the federal government, which system was afterwards modified by the Constitution of the United States, so as to dispense with contributions from the states, and invest Congress with power of taxation upon imposts, and of direct taxation, according to representative population. Certainly the terms of these grants were not intended to confine Congress to a disposition of the lands by sale only: Because, first, they expressed no such thing; and because, secondly, the political jurisdiction, as well as the right of soil, were included in the designation of "a common fund."

Again: It would be practically impossible, under any system whatever, to secure *equal* benefits from the domain to all the states. If you sell the lands in Ohio, you may divide the avails between that state and all her sister states, but the land will still remain, yielding power and wealth, directly to Ohio, forever; while the other states can be only indirectly recipients of such benefits.

What was intended then was simply this: that whatever disposition Congress should make of the domain, should be one purely national and impartial. It seems to me to mean nothing more, and the Constitution expresses that meaning fully. If, then, the adoption of such principles as I have discussed has become necessary already, or shall hereafter become necessary, the policy would

then be a proper exercise of the constitutional power, and would fall within the trust as defined by the deeds of cession.

This is a subject of vast importance. It reaches across the whole basis of the great empire which is rising on this continent, and forward through all the stages of its elevation, and even of its decline and fall, if it shall not be perpetual. Posterity, and perhaps the civilized world, will review our decisions in the light reflected on them by their broad and lasting consequences. May they be such as will safely abide so severe and so impartial a scrutiny.

WELCOME TO LOUIS KOSSUTH.

DECEMBER 9, 1851.

THE following joint resolution, submitted by Mr. SEWARD, was under consideration.

Resolved by the Senate and House of Representatives of the United States in Congress assembled, That the Congress of the United States, in the name and behalf of the people of the United States, give to Louis Kossuth a cordial welcome to the capital and to the country; and that a copy of this resolution be transmitted to him by the President of the United States.

Mr. PRESIDENT: I have said that I should refrain from discussing this question on its merits at the present time. I will advert simply to the circumstances under which it comes before Congress. If the distinguished personage, whom it is the design of this resolution to honor, had floated upon our shores unbidden and unheralded, there would have been no great embarrassment in suffering his arrival to pass without notice by Congress; but the case is widely different. The Congress of the United States found him a prisoner in Asia Minor—an exile from his native land, in an effort for the redemption of which he had fallen. They required the President of the United States to express to him the sympathy of Congress in his exile and misfortunes, and to tender to him an invitation to come to America as an asylum, in one of the public vessels of the nation. The President executed these instructions, and in pursuance of them, it is known to all the world that Kossuth was liberated from his captivity, and that he is now upon our shores. The President of the United States, in anticipation of his arrival, informed Congress on their assembling at the present session, that he had executed their instructions, and that the arrival of this illustrious man was hourly expected, and recommended to us to take into consideration the proper manner and

ceremonial of receiving the guest who had been brought here under their authority. This of itself was sufficient to engage the attention of the civilized world for the action of Congress in relation to the personage whose name and fame filled the eye and ear of the world. But the action of government has not stopped here. In pursuance of this recommendation, and at the instance of the President and the administration, the subject has been introduced into this chamber—a debate has opened upon the question submitted by the President. Under such circumstances absolute silence would amount to nothing short of neglect, and neglect would be liable to be construed, in my poor judgment, into indignity. It is under these circumstances that this question comes before Congress, and I am sure it is not the intention of the Senate that their treatment of Kossuth should be that of either neglect or indignity. But if such would be the result, the consequence would be the inflicting of a wound upon the generous and noble heart of a friend of liberty, whose gratitude we have awakened and stimulated, and in whose bosom we have kindled the expectation of a warm, a generous, a cordial welcome. The effect would be this upon him. The effect upon his country would be to subdue the feelings of affection and gratitude which the expression of sympathy in her misfortunes heretofore has awakened. The effect of it would be to discourage the hopes and expectations of the friends of freedom throughout the world; and finally, to encourage the advocates of oppression throughout Europe in their efforts to prevent the transition of the nations of that continent from under the system of force to the voluntary system of government which we have established and commended to their adoption. Under such circumstances, I was not at liberty to consent to be understood as being willing to allow the arrival of Kossuth in the United States to pass unnoticed. In order that I might put myself right, and give an opportunity to others who might agree with me in opinion to put themselves right, I have endeavored to submit a proposition which would avoid the consequences which have been deplored, and bring this question before Congress in a shape so unexceptionable that it seemed to me all might agree in adopting it.

A word now upon the form of reception, or welcome, which I propose. It is not the form which I myself would originally have wished. I have no particular tenacity in regard to it. The pro-

position submitted by the honorable Senator from Mississippi [Mr. FOOTE] would have received my vote; it would have received it if it had said more, as was proposed by the honorable Senator from New Hampshire, [Mr. HALE.] It would have received it if it had said less. It would have received my support under any circumstances, if it had been pressed, and I should have endeavored to have co-operated with the honorable mover of it in avoiding any amendment which might have embarrassed its passage through the Senate. But that question has passed away; and in looking around for what might be substituted by us, it seemed to me that, if there was one sentiment more plainly and universally expressed by the American people than any other, in regard to the Hungarian revolution, and in regard to its hero, the champion of Hungary, it was that of WELCOME TO THE SHORES OF THE UNITED STATES. Taking that idea as my guide, I have submitted a resolution in which it is proposed that Congress shall declare that they give to Louis Kossuth, whom they have brought to our borders, a cordial WELCOME.

Less than this, Mr. President, no man can propose who thinks it proper to make any expression, or to take any action; and more than this, it seems to me, must be waived. It must be something like this, or nothing, and this is better than nothing. I would have the passage of this resolution communicated to Kossuth by the President, the executive organ of the nation. My own feelings would exact more; but I am content to waive more under this consideration—that the simplicity of the act will give it a peculiar value. I know not, in the history of this nation—I know not in the history of modern times, a more sublime spectacle than would be afforded by seeing the Congress of the United States, in the name and behalf of the American people, bidding Kossuth, the representative of the cause of voluntary government in Europe, a cordial welcome on his escape from the perils of his position, and his arrival in this land where that system of government is established and in full operation.

There is a simplicity in this ceremony which is worthy the dignity of the American government and the greatness of the American people; there is a simplicity in it worthy the character of the illustrious man whom it is proposed to honor. I have no tenacity in regard to this measure in preference to any other which would make me insist on this at the hazard of its defeat.

It seems to me to be preferable to that of the honorable Senator from Illinois, and gentlemen say that they do prefer it upon the ground that this would be the joint act of both houses of Congress. I am quite sure that if adopted here it would be concurred in by the House of Representatives, and would thus become a national act of welcome. I confess that I am desirous that, as the Congress of the United States caused Kossuth to be brought here under their authority, his reception should be a national act; and that Congress should not be divided in its expression or its action on this the crowning occasion of the whole. This form also seems to me to commend itself to the adoption of the Senate, because it stops short of committing Congress or the government to any action beyond that of simply giving welcome. What I desire is not the utterance of words. What I want to see—what I want to have Congress do, is to extend the welcome which the world expects us to give to the illustrious exile.

Objections have been made, to which I will advert very briefly. It has been said or intimated that we are not well aware of what we are doing—that we are not well acquainted with the character of Kossuth—that we do not know certainly that he is entitled to these attentions from the American people. Sir, in the course of human events, we see the nations of Europe struggling to throw off their despotic systems of government, and to establish governments upon the principle of republicanism or of constitutional monarchy. Whenever such efforts are made, we see it invariably happen that the existing despotisms of Europe combine to repress those struggles—combine to subdue the people. The consequence is, that despotism is a common cause, and it results also that the cause of constitutional liberty has also become one common cause —the cause of mankind against despotism. Now whatever people leads the way at any time in any crisis in this contest for civil liberty, becomes the representative of the nations of the earth. We once occupied that proud and interesting position, and we engaged the sympathies of civilized men throughout the world. No one can deny, that recently Hungary assumed that same position; and the records of our own legislature show that we, in common with the friends of civil liberty in Europe, held Hungary to be the representative of the nations of the earth in

this great cause. We had a messenger on the verge of the battle-field ready to acknowledge her independence.

Mr. President, it happens, in the Providence of God, that whenever a nation thus assumes to open this controversy for liberty, in behalf of the nations of the earth, some one man more than another becomes identified with the struggle by his virtues, by his valor, by his wisdom, or by his sufferings, until he eclipses others who may be associated with him, and comes to be regarded by the country itself, in whose behalf he labors and struggles, and by mankind, as the representative of that nation, and of that cause. The deliverance of Switzerland brings up at once the name of William Tell. The struggle of Scotland calls up the name of Wallace; and all over the world no man ever hears the American Revolution spoken of, but it calls up the majestic form of Washington! So it happens that the name of Hungary calls up at once the great, the towering fame of the author, the hero, and the sufferer of the Hungarian Revolution. Now, then, shall we say that we do not know that Kossuth is worthy to be regarded as the friend and advocate of liberty in his own country? Shall we say that he does not merit the homage paid to him as the leader of the Hungarian Revolution? Hungary herself has set the seal upon his merits, and concluded that question, and it would be as unreasonable and absurd to listen to those who should depreciate the principles or the character of Washington, as it is to stand doubting or hesitating whether, in honoring Kossuth, we are really doing honor to his cause, and the cause of his unfortunate country.

But it is asked, Why should the American people engage in paying this homage to Kossuth, when, granting all his merits, he has nevertheless done nothing for America? True, he never did anything for America. We have reached that time when no man living out of America can confer upon us a benefit. We are beyond the reach of beneficence other than at the hand of the Great Creator and Preserver of nations; but do we honor only those, do we reward only those who confer benefits upon us? Certainly not. We honor those who serve the common cause of civil liberty throughout the world. That cause is our own cause. We therefore honor those who advance and promote it. But, although Kossuth has done nothing for this country, Europe has. It has sent us a Lafayette, a Kosciusko, a De Kalb, and a Steuben, and

thus has created a debt against us, which, while we cannot pay to the illustrious dead, we can discharge toward fit and lawful representatives, in the persons of the illustrious living.

I shall notice a single other objection, and then I shall leave this resolution to its fate. It is an apprehension that, by the adoption of this, or a similar motion, the Congress of the United States will commit itself to some act of intervention in the affairs of Europe by which the government of the United States may be embarrassed in its foreign relations. Mr. President, I am a lover of peace. I shall never freely give my consent to any measure which I shall think will tend to involve this nation in the calamities of foreign war. I believe that our mission is a mission of republicanism. But I believe that we shall best execute it by maintaining peace at home and with all mankind; and if I saw in this measure a step in advance toward the bloody field of contention in the affairs of Europe, I, too, would hesitate long before adopting it. But I see no advance toward any such danger in doing a simple act of national justice and magnanimity. I believe that no man will deny the principle, that a nation may do for the cause of liberty in other nations whatever the laws of nations do not forbid. I plant myself upon that principle. What the laws of nations do not forbid, any nation may do for the cause of civil liberty in any other nation, in any other country. Now, the laws of nations do not forbid hospitality. The laws of nations do not forbid us to sympathize with the exile—to sympathize with the overthrown champion of freedom. The laws of nature demand that hospitality, and from the very inmost sources of our nature springs up that sympathy. What is that great epic poem which has filled the second place in the admiration, I had almost said in the affections, of mankind for two thousand years, but the history of an exile flying from the walls of his burning city and devoted state? Sir, the laws of nature require—the laws of nations command hospitality to those who fly from oppression and despair. And this is all that we have done, and all that we propose to do. We have invited Kossuth—we have procured his release from captivity—we have brought him here—and we propose to say to him, standing upon our shores with his eye directed to us, and while we know that the eyes of the civilized world are fixed upon him and us, "Louis Kossuth, in the name of the American people, we bid you a cordial welcome."

WELCOME TO LOUIS KOSSUTH.

DECEMBER, 12, 1851.

I will suppose now that the opposition made to this resolution is effective. I will suppose that the measure is defeated. Let us look to the consequences beyond. What are they? Kossuth, admitted here to be the representative of the down-trodden constitutional liberties of his own country, and the representative of the up-rising liberties of Europe, shakes from his feet the dust that has gathered upon them on American shores, and returns to the Eastern continent—returns upon a point of honor with the United States of America, and therefore, in a practical view, returns, as he will say, and those devoted to his cause will say, repulsed, driven back. Where then, sir, shall he find welcome and repose? In his own beautiful native land, at the base or on the slopes of the Carpathian hills? No! the Austrian despot reigns absolutely there. Shall he find it in Germany, east or west, north or south? No, sir; the despot of Austria and the despot of Prussia reign absolutely there. Shall he find it under the sunny skies of Italy? No, sir; for the Austrian monarch has crushed Italy to the earth. Shall he find it in Siberia, or in the frozen regions of the North? No, sir; for the Russian Czar, who drove him from his native land and forced him into exile in Turkey, will be ready to seize the fugitive. The scaffold awaits him there. Where shall he go? Shall he seek protection again from the sceptred Turk? The Turk would say, You have eaten my salt as a voluntary captive, and I sheltered you until you left me under the seductions of the republic of the United States. If you come now, the laws of my country and of my God will not oblige or allow me to hazard the peace of my own people again to extend protection over you. Where, then, shall he go? Where else on

the face of broad Europe can he find refuge but in the land of your forefathers, in Britain? There, God be thanked, there would be a welcome and a home for him. Are you prepared to give to the world evidence that *you* cannot receive the representative of liberty and republicanism, whom England can honor, shelter, and protect?

But, Mr. President, will this transaction end there? I fancy that I see the exile wending his lonely way, with downcast looks, along the streets and thoroughfares of the great metropolis of Britain and the world, forsaken and abandoned, but not forgotten. Will it end in that? No, sir. Beyond us, above us, there is a tribunal, higher and greater than the Congress of the United States. It is a tribunal whose existence and jurisdiction and authority we have acknowledged, and to whose judgment-seat we have already called the Turk, the Austrian, and the Russian, to account for their action in regard to Hungary and to Kossuth. It is the tribunal of the public opinion of the world—the public opinion of mankind. Sir, that tribunal is unerring in its judgments. It is constituted of the great, the wise, and the good of all nations—not only of the great, and wise, and good who are now living, but of the great, the wise, and the good of all ages. Before that tribunal, states, great and small, are equal. Ay, before that tribunal the proudest empire is equaled by its humblest citizen or subject. Yes, the Indian and the serf are equal there to the American Republic and to the Russian Empire. I know no living man entitled by the consent of Christendom to preside in that august tribunal. But there is a venerable form that seems to rise up before me, and all the congregated nations and people deferentially make way as he advances and takes the judgment-seat. It is the shade of Franklin. And there I see the parties opposed. On the one side stands Hungary, downcast and sorrowful, but she is surrounded by the people of many lands, who wait her redemption and their own. On the other side I see the United States of America, sustained—most singular conjunction!—by the youthful and impatient Bonaparte, the sickly successor of the Romans, and the Czar of all the Russias. I hear the impeachment read. It is, that the United States have dishonored and insulted the unfortunate representative of unfortunate Hungary; that they found him a captive in Asia Minor, under the protection of the Turk, but subjected to the surveillance of the Russian

tyrant; that they addressed to him words of sympathy and hope, and that they brought to the doors of his captivity a national vessel, with their time-honored flag, and bade him to come upon its deck and be conveyed to a land of constitutional freedom—a land where the advocates and champions of universal liberty were sure to enjoy respect and sympathy, and fraternal welcome; and that when they had so seduced him from a place of obscurity, but of safety, and had thus brought him to their own shores, and when he stood waiting there for one simple word of welcome, one simple look of recognition, they turned away from him, spurned him from their presence, and cast him back upon the charities of Christian or Turk, in whatever land they might be found.

That is the impeachment. And the United States hold up the right hand and answer, "Not guilty." I see the books of testimony opened on behalf of Hungary. Here they are. A resolution of the Congress of the United States of America, passed in the year 1850, tendering the hospitalities of the nation, and the use of a national ship, to Louis Kossuth; then the message of the President of the United States, in 1851, calling upon Congress to say what shall be the ceremonial of receiving him who has been brought here under their authority; and then the record of this Senate, that upon a division of its members, a resolution of welcome was rejected. That constitutes the case on the part of Hungary. Sir, the United States appear in that august tribunal by learned and eloquent defenders and advocates. I see there my ardent and enthusiastic young friend from Alabama, [Mr. Clemens,] and the candid and learned Senator from Kentucky, [Mr. Underwood,] the impulsive and generous Senator from Georgia, [Mr. Dawson,] the very learned and astute advocate the honorable Senator from North Carolina, [Mr. Badger] and, lastly, he who holds the first place in our veneration of living senators, save only one, [Mr. Clay] the honorable Senator from Georgia, [Mr. Berrien.] I listen to the long, elaborate, and earnest defence which they make against this impeachment. Hungary declines to reply; and Kossuth, the orator of modern times, upon whom she leans for support, for the first time overcome by a sense of cruel insult, is silent, dumb.

The defence is weighed by that august Shade, in whose placid countenance I read at once the sagacity of the lightning hunter

and the common sense of Poor Richard: "You say, that your invitation to the Magyar 'justified on his part and on the part of Hungary no expectation of a welcome.' How, then, came Kossuth, how came Hungary, how came the world, how came you, how came your President to misunderstand the invitation which was addressed to the exile? When did you first revise your diplomacy to ascertain to what extent you might abridge the hospitalities to which you had invited him? Not until you were committed before the world. You say that 'Kossuth was invited to be a resident, to become a citizen of the United States, and yet that he came, on the contrary, as a transient guest.' Grant it; what then? Is a welcome less due to him whom you have invited as a perpetual guest, when he comes to thank you and decline the courtesy, than if he had accepted it and had become a perpetual charge upon your hospitalities? You say that the honors to Kossuth 'were moved in your Senate by ambitious aspirants for place and distinction.' Has, then, my country degenerated so much that there are no true, genuine patriots in the Senate of the United States who could lead that illustrious body in the discharge of so great a national obligation? You plead that the Hungarian chief 'was a noble by birth, an aristocrat by education and association, and that he had devoted himself in an effort not to disseminate the spirit of universal liberty, but to fortify the privileges of the Magyar race?' If that be so, did you not know it when you invited him? If you did not, how can you justify your ignorance of a character that was blazoned to the world? But it is not true. Kossuth's first public action in early youth, was an effort, through the Hungarian Diet, to extend equal privileges of representation, of suffrage, and of taxation, to all the people of Hungary, without distinction of rank, or caste, or race. For his fidelity to the great cause of human equality and freedom, he was imprisoned three long years in a dungeon in the castle of Buda by the hand of the Austrian despot. When he came out from that captivity, he commenced that career of agitation for the restoration of the constitution of his country, which ended with success in the year 1848. When he had wrung that charter from the Emperor of Austria, his constitutional king, the first exercise of Hungarian authority by the legislature which he directed, was an act which abolished all the feudal tenures, that brought land within the reach of all, and put the Croat, the Wallachian, the Illyrian, the Jew, and the

Magyar, upon the same platform of equality before the law, equality before the government, equality in representation, equality in suffrage, and equality in enduring the burdens of government. It was for this that he was hunted from his native land and came an exile to your shores. Who pursued him there with reproaches of falsehood to freedom? Not the Jew, the Croat, or the Sclave, but the tyrant of Austria, who has reduced all the people of Hungary, of whatever rank or race or caste, to the level of slaves. You say that you were willing to give Kossuth a welcome, but that he demanded more. How did you know that he 'demanded more?' How did you learn that Kossuth demanded more than a cordial welcome? Where did he ask of you even so much as a welcome? Was it in your capital? To whom did he address his extravagant and offensive reclamation? Was it to your President? to your Ministry? to your Congress? No; all alike refused to receive him, refused even to hear him speak, and yet you say he demanded too much. You closed his mouth before he had time to tell you what he thought, and what he wanted, or whether he wanted anything. But you reply, he was overheard to say that he expected arms, men, money, 'material aid, and intervention.' Overheard? What! did you deliver Kossuth from Russian surveillance in Turkey to establish an espionage over him of your own? Shame! shame to the country that so lightly regards the sanctity of the character of a stranger and an exile! But you say that he would have demanded *intervention*. Suppose he should have demanded intervention? Would you have been less able to have met that unreasonable demand after having accorded to him the exact justice which was his due, than you are now when you have done him injustice, and thus clothed him with the sympathies of your people and of mankind? But you aver that he spoke irreverently of your authority: he was overheard to say, in the outgushing of his gratitude to the generous people who received him on Staten Island, that the people were the sovereigns of the government of the United States, and you cannot pardon that offence. What if he did say that? Are not the people the sovereigns of the government of the United States? Which one of your senators or representatives dare deny in his place that the people are his sovereigns? But you say that you had a precedent; that you once took offence at a minister of France who assumed the same position. You refer to Genet. But there is no parallel.

Genet was a minister of a government actually hostile, almost belligerent. He was in negotiation, and his demands were denied. He took an appeal from the decision of your government to the people. But Kossuth is no minister. He is your guest. He went to you not to negotiate, or to demand a right. He went by your invitation to enjoy your hospitalities. You have decided nothing against him. He has submitted no appeal. I do not say that you ought to have granted intervention had it been demanded. But I do say this, that the Hungarian would have demanded no more of you than, in a strait less severe than his, I solicited and obtained for the United States of America from the Bourbon of France. Could you not have pardoned him for asking what you had once asked and obtained for yourselves? Was it so great a fault in him to suppose that now, in the day of your greatness, prosperity, and power, you might not be unwilling to do for Hungary what, in the day of your infancy, poverty, and weakness, France had done for yourselves? You say you stand upon precedent. Precedent? By whom established? By yourselves. Was Hungary concluded by such a precedent? And what precedent? The precedent of the reception given to Lafayette? Was not even that reception grudgingly given by the Congress of the United States? If the ashes of Lafayette could be reanimated, and he could present himself again upon your shores, would you not now willingly accord him a greater than the welcome he before received at your hands—a welcome, such as it was proposed to give to Kossuth? Wherein does the parallel between Kossuth and Lafayette fail? Lafayette began his career as a soldier of liberty in the cause of your country; but he pursued it through life in an effort to establish a republic in his own beloved land. Kossuth found the duty which first devolved upon him was to wage a struggle for freedom in his own country. When overborne there, he became, like Lafayette, a champion of liberty throughout the world. You say that the Russian might have taken offence. Is America, then, brought so low that she fears to give offence when commanded by the laws of nature and of nations? What right had Russia to prescribe whom you should receive and whom reject from your hospitalities? Let no such humiliation be confessed."

Thus in the tribunal of the public opinion of mankind, all our

pleas are disallowed. We have exposed ourselves to the *censure*—I will not say to the *derision, of the world.*

It is said, Mr. President, that there is danger of intervention if we accord these honors; that intervention will follow them. No, sir; it is not a question of intervention future, but of intervention past! There has been intervention already. Russia has intervened, and Hungary has fallen by that crime. Kossuth is an exile upon our shores in consequence of it. What we have done already, was by manifesting our sympathy for him, to express our abhorrence of the intervention of Russia, which has worked so great injustice, and to rebuke and prevent such intervention hereafter. What do we now propose to do? To grant a welcome to Kossuth. It is but the fit conclusion of an action already near complete. I greatly fear that we do not understand our own interests in this great question. We cannot extinguish sympathy for freedom elsewhere, without extinguishing the spirit of freedom which is the life of our own republic.

Again, sir, you may reject Kossuth; you may, if you please, propitiate despotic favor by trampling the exiles of all Europe under your feet. But what will you have gained? This republic is, and forever must be, a living offence to Russia and to Austria, and to despotic powers everywhere. You will never, by whatever humiliations, gain one friend or secure one ally in Europe or America that wears a crown. It is clear that the days of despotism are numbered. We do not know whether its end is to come this year, or next year, or the year after; in this quarter of a century, or in this half of a century. But there is to come, sooner or later, a struggle between the representative and the arbitrary systems of government. Europe is the field on which that struggle must take place. While the representative principle is gaining strength among the people, the power of Russia is seen to culminate. That struggle will be between Russia, whose power extends across the whole northern part of the Eastern Hemisphere, and all the people of Southern and Western Europe. If the Russian autocrat prevail in that contest, we shall be left without friends or allies in the Eastern World. Is it wise to deny ourselves the benefits of alliances with states kindred in political interests and constitutions? Far otherwise; true wisdom dictates that we lend to European nations, struggling for civil liberty, all possible moral aid to sustain them until they can mature and

perfect their strength for that great conflict, through which they are doomed to pass. The nations that we thus lawfully aid to raise up, will constitute a lasting and impregnable bulwark for ourselves.

NOTE.—The joint resolution was then ordered to a third reading, by the following vote:

YEAS—Messrs. Bradbury, Bright, Brodhead, Cass, Chase, Clarke, Davis, Dodge of Wisconsin, Douglas, Downs, Felch, Fish, Foot of Vermont, Foote of Mississippi, Gwin, Hamlin, Hunter, James, Jones of Iowa, King, Mallory, Miller, Norris, Rhett, Seward, Shields, Smith, Spruance, Stockton, Sumner, Wade, Walker, and Whitcomb—33.

NAYS—Messrs. Badger, Borland, Clemens, Dawson, Morton, and Underwood—6.

The resolution was then read a third time and passed.—ED.

THE IRISH PATRIOTS.

FEBRUARY 11, 1852.

NOTE.—The Senate resumed the consideration of the resolution submitted by Mr. FOOTE, of Mississippi, on the 2d December, expressive of the sympathy of Congress for the exiled Irish patriots, SMITH O'BRIEN and THOMAS F. MEAGHER, and their associates.

Mr. SEWARD had proposed to amend, so that the resolution would read as follows:

"That while we disclaim all intention of interfering in any way in the internal affairs of the Kingdom of Great Britain and Ireland, we deem it our duty to express, in a courteous manner, our opinion that it would be highly gratifying to the people of the United States, (many of whom are natives of Ireland, and connected by blood with the inhabitants of that country,) to see Smith O'Brien and his associates restored to liberty, and permitted, if so disposed, to emigrate to this country. And that this act of clemency would be regarded as a new proof of the friendly disposition of the British Government towards our republic, and as calculated to strengthen the bonds of affection now happily existing between the people of the United States and of the United Kingdom of Great Britain and Ireland."

Mr. PRESIDENT: The resolution now before the Senate, seems to me neither inconsiderate nor unimportant. It is a resolution which must have the assent of both Houses of Congress, and the approbation of the President of the United States, and so it would become a national act. It recommends—I might, perhaps, say solicits—clemency towards the patriots of Ireland who are suffering imprisonment in a penal colony; and it is designed for the information of the British Government, and therefore must be regarded as an appeal by the United States to Great Britain.

Sir, I think the proceeding is defensible upon the grounds of abstract justice and propriety, as well as upon a due consideration of the relations of all the parties concerned.

I beg leave to say, in the first place, that it is not altogether novel in character and principle. The patriots of Ireland, who are the subjects of this debate, are suffering imprisonment in consequence of an effort, honestly made, to restore their native land to liberty and independence. The sympathy expressed by this resolution for them springs from the same source from which the

sympathy of the people of the United States has sprung, which has been habitually exhibited toward nations striving to assert the same rights—the sympathy which was expressed by the people of the United States toward France in 1793, in 1830, and in 1848; toward Greece, toward the rising South American republics, toward Poland, toward Germany, and toward Hungary. Even in form, sir, the measure assimilates itself to the action of Congress in regard to Louis Kossuth, who has been, through our interposition, released from imprisonment in Asia Minor, and brought to our shores, received, and welcomed as a guest of the United States.

The interest which is expressed in this resolution for William Smith O'Brien, like that which is expressed toward Louis Kossuth, is not merely personal, but it is the reverential compassion indulged by the people of the United States for a fallen nation "in a man compris'd." It is not, then, the cause of William Smith O'Brien alone—it is the cause of Ireland.

The merits of a nation's cause, and of its defenders, involve not merely the particular accidents or incidents which bring the cause before us, but the whole life of the nation. So it was that our forefathers, in adopting the Declaration of American Independence, reviewed the entire colonial experience in vindication of the act of abjuration of their allegiance to the British throne.

Ten centuries ago, sir, Ireland was an independent nation, possessing the elements and the forces of national stability. Ireland was guilty of one enduring crime—it was the crime of proximity to England. Ireland labored under one enduring misfortune—it was the misfortune that, for many centuries, she had remained unconquered and unconquerable. The crime provoked the cupidity of England, the misfortune begat divisions into septs and clans, and these civil distractions favored an invader. At the very moment, sir, when Henry, a Norman King of England—the second of that name, I think—was, as the chronicle relates, "casting in his mind to conquer the adjacent island, because it seemed to him to be commodious, and because its inhabitants were savage and rude," he was applied to by a deposed Irish prince to reinstate him on the throne. The invader enjoyed one vast advantage: England had been successively subjugated by the Romans, the Danes, the Saxons, and the Normans, and in that rough experience she had acquired the consolidation and discipline which,

combined with the energy arising from a mingling of races, and an ambition springing from an insular position, have enabled her almost "to have the world in empire."

The invasion, of course, did not result in restoring the Irish King, nor did it result in the conquest of Ireland. It ended in only the establishment of a small colony upon the coast, enclosed with palisades, and therefore called "The Pale." Within the "Pale" were Englishmen, English lords, English manners, English customs, and English rule; and without the "Pale" were the entire nation of Irishmen, with their hereditary princes, and their native language, customs, and manners.

Acting upon the law of nations, as it was then understood, these races regarded each other as natural enemies; and hence ensued wars unsparing and unrelenting. The Reformation forced a new element into this internecine strife. The Catholic Church in England had given place to one which suited its kings and people better. Considerations of prudence, co-operating with a spirit of proselytism, determined the government of England to subvert the Catholic Church in Ireland. The sword was the *missal* sent, and a ferocious soldiery were the apostles of the new faith. The Irish preferred their paternal religion to that which was so rudely recommended to them by their enemies. The "Pale," although backed by England, was too feeble to subjugate Ireland; and Ireland, distracted by the jealousies of her clans, was too weak to crush the "Pale;" and so for four hundred years continued wars, at the end of which both parties retained their relative positions and power. And thus all that important portion of the nation's life was worse than lost, in consequence of an *imperfect conquest*. At last, five hundred and twenty years after the first invasion by Henry, and at the close of the great battle fought on the banks of the Boyne, Ireland capitulated; and at that time the entire twelve millions of acres of tillable land were divided and parcelled out among the invaders and the few apostatizing natives. Ireland capitulated; and, by the treaty of Limerick, subjected herself to the government of the "Pale." But she reserved, in the most solemn manner, the liberty of conscience. This right—the liberty of conscience—was not only stipulated by the treaty of Limerick, but was solemnly guarantied by William and Mary, now the common sovereigns of the two countries.

England, nevertheless, persevered in her policy of subverting

the Catholic Church, changing only the means employed for that purpose. She perfidiously broke the covenants of peace, though they had been written in blood, and established a penal code, disfranchising the Catholic Irish people of all civil, political, social, and domestic liberty, as well as of their ecclesiastical rights, and thus substituted for invading armies the sterner despotism of the law, and withdrew the sword to replace it with the scaffold.

Sir, I shall not detail that atrocious code, but will content myself by giving a description of it, drawn by Edmund Burke, seventy years ago—a description which time has now proved prophetic:

"It is," says he, "a *system full of coherence and consistency, well digested and well disposed, in all its parts fitted for the impoverishment*,"—(yes, sir, these are the words,)—"*fitted for the impoverishment and the degradation of a people, and for debasing in them of human nature itself.*"

The after history of Ireland, Mr. President, is a record of frequent and generous, but unavailing struggles, by or in behalf of the People, to cast off that code, and, more recently, to redeem the country from its desolating effects. In the year 1778, Grattan, Burke, and Flood, profiting by the enthusiasm awakened throughout the world by the American Revolution, and by the embarrassment of the British government in consequence of it, succeeded in obtaining from the British Parliament a relaxation of the rigors of the code in regard to education and the rights of property; and, in the year 1782, when the exigencies of the British government had become more alarming, they succeeded in wresting from the British King and Parliament a renunciation of legislative and sovereign power over the Kingdom of Ireland; and it was expressed in these solemn and memorable words:

"The rights claimed by the people of Ireland, to be bound only by laws enacted by His Majesty and the Parliament of *that* kingdom, shall be and are established, and, at no time hereafter, shall be questioned or questionable."

Sir, Ireland exulted for a delirious moment in national independence regained; but it was only for a moment, and that moment was delirious. Ireland required the repeal of the penal code, and demanded a constitution. The Parliament of the "Pale," constituted of a Protestant representation alone, and, being in the interest of England, refused both. Discontent, wide and deep, pervaded the Irish people. Emmett, Fitzgerald, and their associates, in 1798, conspired to raise the standard of insur-

rection; but they were betrayed, and the rebellion was crushed in the germ.

The government of Great Britain now assumed that the people of Ireland had tried, fully and fairly tried, the experiment, and had proved themselves incapable of exercising the franchise of self-government. The British Parliament, therefore, sent down to the Parliament of the Pale what was called an act of Union, and in the year 1800, that mockery of a legislature adopted it, and surrendered its own perfidious and pernicious existence. By that act of Union, Ireland, in May, 1800, was in name united, but was in fact absorbed, and became virtually a province of the British Empire, with only the shadow of a representation of the Protestant minority of the kingdom in the British Parliament. Daniel O'Connell, a jurist and advocate of surpassing genius, eloquence, and learning, inferring, from the failure of the men of 1798, that the time for a martial revolution had passed away, at least for the present, conceived the bold purpose of obtaining a repeal of the penal code and the restoration of his country to a place among the nations, by a process of civil agitation, always within the restraints of the law, and looking for the effect through the action of the King and Parliament of England. In the year 1829, he obtained a signal triumph in the passage of the act of Catholic emancipation. There remained but one step between this memorable act and the freedom and independence of Ireland. That step was the repeal of the Act of Union. But the ruin and desolation resulting from the penal code, which Burke had predicted, pressed too hard upon the march of the Reformer. Ireland could not wait the slow progress and doubtful success of civic agitation. The nation divided between the parties of "Old Ireland," following the lead of Daniel O'Connell and his peaceful standard, and of "Young Ireland," under the revolutionary banner set up by William Smith O'Brien. Now, in point of fact, it is possible that even if the Irish people had remained united, neither of those policies would have been successful; but it is also certain, that when the nation divided and broke, both efforts signally failed. Daniel O'Connell died of a broken heart at Genoa, on a pilgrimage to Rome, and William Smith O'Brien, the leader of the Irish rebellion, being found without attendants, arms, or troops, was arrested, convicted of high treason, and sen-

tenced to an ignominious death. His sentence, being commuted by the Crown, he is now an exile in Van Dieman's Land.

Simultaneously with the failure of these, the last efforts hitherto made for the redemption of Ireland, poverty and pestilence stalked abroad through that ill-fated country, exciting the sympathy of nations, and moving even the distant people and Congress of the United States to send relief. Depopulation of the island assumed a frightful momentum, and, from that time to this, has continued to give the last confirmation, which the most skeptical could have required, of the conclusion, that never on earth was a revolution more just or more necessary, than that attempted by William Smith O'Brien and his companions in exile.

Sir, it is not my object, in this review, to excite prejudices, here or elsewhere, against England, or against the Protestant Church within that kingdom. I have no such prejudices myself. I disclaim and disdain partisanship in regard to historic events. O'Connell was a Catholic; Smith O'Brien is a Protestant. The rage of the sects has died away in the agony of the catastrophe which has involved the people of both in a common desolation; and wise and sagacious men in England look on the decay of Ireland as an alarming presage of the decline of the empire. But, sir, on an occasion like this, Ireland is entitled to, and from me she has received, her vindication. The policy of England was the policy of the age, and of the times, and of systems; and this is her sufficient apology.

The sympathy of the American people, then, in behalf of Ireland, is just.

I proceed to remark, that this sympathy derives intenseness from the conceded genius and proverbial virtues of the Irish people. The plains of Waterloo, and the heights of Abraham, attest that they are brave as well as sagacious in war. Like the Greeks, in their decline, they have enchanted the world with their wit and song and eloquence. They are confessedly confiding and generous to a fault, while their whole history and traditions, reaching now a period of a thousand years, exhibit not one instance of unlawful aggression. Is not, then, the tribute proposed by this resolution due to such a people? And if so, why shall it not be offered?

I am answered, that this is a question for the British Government, and that it is they, and not we, who are to extend clemency

or pardon to the Irish exiles. I grant it, fully grant it. But men and nations are moved by persuasion. What is asked here, is not an exercise of clemency, but only a word of persuasion to be whispered to the power that can grant it.

I am told that we may lawfully sympathize, *as individuals*, in the misfortunes of these unhappy men, and of their more unhappy country; but that to this country as a political body—a state or nation—or to us as the representatives—the government of a nation—such sympathy is forbidden. This seems to me equivalent to saying that we may indulge sentiments of generous compassion, but we shall never carry them into beneficent action. The sympathy of the several members of this Senate, or of this Congress, or of the individual citizens of the United States, will be unavailing. If that sympathy is truly felt by the nation, it can only be effectually expressed in the manner in which national sympathies, and determinations of the national will, are always made effective—by the action of the government. And, sir, let me say, that there is only one code of morals for mankind, and its obligations bind them equally, whether they be individuals, subjects, citizens, states, or nations.

I shall be told, that we may not intervene in this, which is a domestic affair of a foreign government. It is true that we may not intervene in the affairs of any government for unjust purposes, nor can we intervene by force for even just purposes. But this is the only restraint imposed on us by the law of nations. That law, while it declares that every government has the absolute right to deal with its own citizens, according to its own laws, independently of any other, affords a large verge and scope for the exercise of offices of courtesy, kindness, benevolence, and charity. It is Montesquieu who says that "the law of nations is founded upon the principle, that every nation is bound in time of peace to do to every other nation all the good it possibly can, and in time of war, the least evil it possibly can consistently with its own real interests." It is upon this humane principle that diplomatic intercourse is maintained among the civilized nations of the earth, all of whom are, by the law of nations, regarded as constituting one great commonwealth.

Again, Mr. President, it will be said that if we adopt this resolution, it will, however harmless it be in itself, furnish a precedent for mischievous intervention, either by ourselves in the affairs of

other states, or by other states in our affairs hereafter. To admit this argument is to admit distrust of ourselves. We certainly do not distrust our own sense of justice. We do not distrust our own wisdom. So long as we remain here, then, we shall be able to guard against any such abuse of this precedent. Let us also be generous instead of egotistical, and let us believe that neither wisdom nor justice will die with those who occupy these places now, but that our successors will be as just and as wise as we are. So far as the objection anticipates an abuse of this precedent by foreign states, I have only to say, that if a foreign state shall ask of us just what we now propose, and no more, we shall have no difficulty and no ground of complaint. If it shall ask more, we shall be free to reject what shall then be asked, as the British Government is free to reject our application.

Sir, this proposition involves a view of the relations of the parties concerned. The people of Ireland are affiliated to us, as we are to the people of Great Britain. Surely there can be no offence given by a younger member in offering mediation between the elder brethren of the same family upon a point of difference between them.

But what if Great Britain should take offence at this suggestion? What then? Why, then England would be in the wrong, and we in the right. The time has passed when this country can be alarmed, by fear of war in such a case. No one will confess that he indulges any such apprehension. Sir, Great Britain will not take offence. She knows that her greatness and her fame are well assured. She has no motive whatever to affect wounded sensibility. She will receive this suggestion in the same fraternal spirit in which it is made. Nor will she refuse the boon. She knows as well as we do, that rigor protracted beyond the necessity of security to the state, reacts. She knows full well, that for the present, at least, sedition sleeps profoundly in Ireland, and that the granting of this appeal will protract its slumbers. Great Britain will be thankful to us for our confidence in her generosity, for her motto is, "*Parcere subjectis et debellare superbos.*"

While it seems to me that it is certain that we may, with propriety and success, make this appeal to Great Britain, the circumstances in which we stand, in regard to Ireland, render the duty of making it imperative. But for the instructions and example of the United States, Ireland would never have attempted revolu-

tion in 1798, nor would William Smith O'Brien now have been an exile; for if it had not been for those instructions and that example, Ireland would long ago have sunk into the slumber of bondage that knows no waking. Again, sir; the failure of Smith O'Brien and his associates resulted from the exhaustion of Ireland. That exhaustion has contributed largely to the elements of our wealth, strength, and power. If we had not withdrawn the political and physical means of self-defence and of resistance from Ireland during the last sixty years, she would now have been able to maintain a successful rebellion. When O'Connell gathered the populace upon the hill of Clare, he found that Ireland was deserted by the vigorous, the young, and the strong, and that he was surrounded by the aged, the poor, and the spiritless. It is these reflections upon the propriety of the act itself, and upon the relations in which we stand toward the parties to it, that persuade my vote in favor of this resolution.

I have suggested to the consideration of the honorable Senator from Illinois, [Mr. SHIELDS,] some verbal amendments which seem to me calculated to improve and perfect the resolution, in accordance with the wish he himself expressed. Their design is to guard more safely the dignity of Congress and of the United States. If rightly conceived, they will have that effect. But I am not tenacious of them. I shall not press them against the wishes of the Senator from Illinois. If they shall be adopted, the resolution will have my vote. If they shall not be adopted, it will have my vote. The resolution as originally introduced would have received my support. Equally shall it have my support in the modified form it has assumed, through deference to the wishes of other senators.

And now, sir, when this resolution in any shape shall have been passed, there can be but one wish of mine in regard to the subject, that Congress will have power to gratify: That wish will be, that he who is now entitled to be regarded as the mover of the resolution, the honorable Senator from Illinois, [Mr. SHIELDS,] should be made the bearer of this appeal to the "Soveraine Queene," in whose will and pleasure the granting of it will rest. It is the remembrance of a scene in one of the oldest and best of English poems which suggests the wish. It would be a goodly and a gracious sight to see that honorable senator returning to his

native land, after his chivalrous and yet modest sojourn here, the bearer of a proclamation of amnesty from the sovereign of his native country thus obtained. And I should rejoice to see the greeting of him by his countrymen,

> "Shouting and clapping all their hands on hight,
> That all the ayre it fils and flyes to Heavene bright."

FREEDOM IN EUROPE.

MARCH 9, 1852.

The question was on the following resolutions, submitted by Mr. Seward, as a substitute for resolutions introduced by the Hon. Mr. Clarke, of Rhode Island:

Resolved, That while the United States, in consideration of the exigencies of society, habitually recognize governments *de facto* in other states, yet that they are nevertheless by no means indifferent when such a government is established against the consent of any people by usurpation or by armed intervention of foreign states or nations.

Resolved, That, considering that the people of Hungary, in the exercise of the right secured to them by the laws of nations, in a solemn and legitimate manner asserted their national independence, and established a government by their own voluntary act, and successfully maintained it against all opposition by parties lawfully interested in the question; and that the Emperor of Russia, without just or lawful right, invaded Hungary, and, by fraud and armed force, subverted the national independence and political constitution thus established, and thereby reduced that country to the condition of a province ruled by a foreign power; the United States, in defence of their own interests, and of the common interests of mankind, do solemnly protest against the conduct of Russia on that occasion, as a wanton and tyrannical infraction of the laws of nations; and the United States do further declare that they will not hereafter be indifferent to similar acts of national injustice, oppression, and usurpation, whenever or wherever they may occur.

Mr. President,—Writers on law teach us that states are free, independent, equal, moral persons, existing for the objects of happiness and usefulness, and possessing rights and subject to duties defined by the law of nature, which is a system of politics and morals founded in right reason; that the only difference between politics and morals is, that one regulates the operations of government, while the other directs the conduct of individuals, and that the maxims of both are the same; that two sovereign states may be subject to one prince, and yet be mutually independent; that a nation becomes free by the act of its ruler when he exceeds the fundamental laws; that when any power, whether domestic or foreign, attempts to deprive a state of independence or of liberty, it may lawfully take counsel of its courage, and prefer before the certainty of servitude the chances of destruction;

that each nation is bound to do to every other in time of peace the most good, and in time of war, the least harm possible, consistently with its own real interests; that while this is an imperfect obligation, of which no state can exact a performance, any one has nevertheless a right to use peaceful means, and even force, if necessary, to repress a power that openly violates the law of nations, and directly attacks their common welfare; and that, although the interests of universal society require mutual intercourse between states, yet that intercourse can be conducted by those only who in their respective nations possess and exercise in fact adequate political powers.

Austria, being situated in Central Europe, with only an inconsiderable sea-port, we have known little of her, except that she was one of the oldest and most energetic and inexorable members of that combination of states which, under the changing names of "The Allied Powers," "The Holy League," and "The Holy Alliance," and with the unchanging pretence of devotion to order and religion, have more than half a century opposed and resisted everywhere the reforming and benign principles of the American Revolution.

Hungary, after having been in ages past the heroic defender of Christian Europe against the armies of Islam, and later the chivalrous guardian of Austria from the usurpations of Prussia and France, seemed near a century ago to disappear, and only four years since came again on the stage, and challenged her part in the drama of nations. She occupied a region within the Austrian Empire with fifteen millions of people, of whom the Magyars, a race that had inherited freedom, arts, and arms, were one-third, while the remainder were Germans, Serbs, and Wallachians, and the two latter classes were debased and virtually enslaved by feudal customs and laws. Under the constitution, given to her by an ancient king, St. Stephen, Hungary was a limited monarchy and an absolutely independent state. Beginning, however, in 1530, she elected for her kings the successive reigning dukes of the house of Hapsburg Loraine for a period of one hundred and fifty years, and then gave them succession to her throne by a law of inheritance. Nevertheless, fundamental laws enacted by Hungary, and accepted by the Austrian dynasty, defined the union of the two states, declaring that the king should have no power before coronation, that he could be crowned only on signing a com-

pact and swearing an oath to sustain the constitution, usages, and laws of Hungary, by virtue of which she was a free and independent state, and that she could be bound by no royal edicts or decrees, but only by laws passed by her own diet or legislature, and sanctioned by her king.

Hungary was always as independent of Russia as we are.

Such, Mr. President, was the condition of Hungary in March, 1848. Now she has neither constitution, nor king, nor diet, nor national functions, nor national organs, nor independence, nor liberty, nor law, but lies prostrate at the feet of the Austrian Emperor, and receives his absolute decrees from the point of the sword. Who has wrought this melancholy and fearful change in a country that had used its liberty so nobly, and had kept it so long? We shall soon see.

In February, 1848, the Hungarian Diet, while revising and meliorating their domestic laws, learned by the telegraphic wires that a republic had risen in Paris, and that a constitutional government was about to rise in Vienna. Availing themselves of these propitious circumstances, they decreed the establishment of an independent national treasury, a resident palatine or viceroy, and a responsible Hungarian ministry—institutions equally necessary, just, and constitutional. Hungary received the royal sanction of these measures with contentment and satisfaction at the very moment when only her word was wanting to subvert the empire. Three days afterward, the Germans obtained a constitution at the hands of the emperor, who thus became a limited monarch in his Austrian dominions, as he had always been in Hungary. The Hungarian Diet at once reformed the social and political condition of the state, and, abolishing feudalism, but not without just compensation, they established equality of taxation, representation, suffrage, and all legal rights among all races and classes throughout the kingdom; and on the 11th of April, the emperor crowned this noble and beneficent work by an edict approving and confirming the new laws, "word for word."

A party of reaction, not Hungarian, but Austrian, on groundless pretences, fomented insurrection in the Hungarian provinces of Servia and Wallachia; and inasmuch as tyranny, when panic struck, cannot but be perfidious, the emperor, violating the constitution and laws, appointed the chief instigator, the Baron Jellachich, to the office of ban or governor of the seditious districts.

Hungary remonstrated, and the emperor disavowed the insurrection, denounced and deposed the ban, and called on the Diet to provide by law promptly and effectually for the safety of the kingdom. Nevertheless, the traitor, privately assured by the monarch, entered the territory of the Magyars with forty thousand men, and, receiving there six auxiliary Imperial regiments, proceeded toward the Hungarian capital, marking his way with inhumanity shocking to describe—burying living men, and slaying women without mercy, and even children without remorse. In the midst of these terrors, the emperor, the crowned and constitutional King of Hungary, rejected the defensive laws which at his own instance the diet had passed, restored to the invading chief his dignities, and, suspending the fundamental laws, proclaimed him now not merely ban of the insurgent provinces, but supreme dictator of all Hungary. Then rang throughout that land a well-known voice —a voice that a tyrant once had stifled for three years in an Austrian dungeon, and that in its turn had made that tyrant take refuge in the subterranean vaults of Schoenbrunn, and in the mountain fastnesses of the Tyrol—a voice that has since been heard by all nations. In tones sad yet bold, and in language solemn yet cheering and prophetic, it predicted that this treason of the king would work out the independence of the Magyar state, and closed with the appeal, "To arms! to arms! every man to arms! And let the women dig a deep grave between Veszprem and Fehervar, in which to bury either the name, fame, and nationality of Hungary, or our enemy!" The sons of Atila rose as one man, the Diet took its firm resolve, the ministry executed it, and the nation organized almost in a day, and appointed and supplied as soon, by the genius which had summoned it to the field, met, defeated, and chased the invader to the very walls of Vienna, and there sat down and waited, unhappily in vain, the concerted rising of the German republicans for the overthrow of the empire. The constitutional assembly of Austria, although cheered by popular victories, vacillated, and then of course cowered, and at last, amid the decimation of the patriots, abandoned the easy revolution. Hungary was thus left alone. Her constitutional compact and oath embarrassed the emperor. He therefore resigned, and his son, a youth of seventeen, sprang into the throne, spurning the hateful ceremonies of a Hungarian coronation, and trampling the Constitution of St. Stephen into the

earth. Nine armies at once entered Hungary on various sides, charged to complete its subjugation by concentrating on the banks of the Theiss. Not one of them reached that beautiful river. All were assaulted, routed and repulsed; and on the nineteenth day of April, 1849, only one year after the nation had become free by the act of her prince, the Diet deposed and banished the House of Hapsburg, pronounced the connection between Hungary and Austria at an end, and declared Hungary an independent state, and committed its government under due responsibilities to its deliverer, Louis Kossuth, as Governor and President. Three days afterward the last of the invading armies withdrew, and thus the war ceased, and Hungary was then in fact and by success of arms, as well as in law and by the voice of justice, independent and free. Nine months later, that independence was overthrown by two hundred thousand Russian troops, with one hundred and forty thousand Austrian auxiliaries, at the command of the czar, on no better pretext than this: that the successful example of Hungary was dangerous to order and religion in Europe. But this was nothing less (in the words of Grotius) than "a deprivation" of Hungary of "what belonged to her," by Russia, "for her own advantage;" and such acts have been universally condemned as criminal by all writers on the Law of Nations from the dawn of that science until its present noon. When, in this fresh and accumulated invasion and intervention, the national armies, not without extraordinary and cheering successes, were at last hemmed in and around the national fortresses, and there remained only a hope that terms of capitulation might be obtained, Gorgey, the victorious and popular military chief, became contumacious toward the civil authorities. He was deposed, but was restored as an indispensable alternative; and then, holding in his own hands the only available means of effective resistance, he exacted an absolute dictatorship as a condition of using them. Invested with supreme power, he used it to complete a surrender of the country in pursuance of previous concert with the enemy, without conditions, except in one instance, and without striking a blow. The civil leader, with a small but heroic band, escaped into Turkey; and now, after undergoing long surveillance there, restored to freedom and activity, he is amongst us, with a soul unsubdued by treachery, misfortune, poverty, reproach, and exile, preparing a new revolution for his fatherland, which, as soon as

it was surrendered to the czar, was by him delivered over to the emperor, and at once submerged in the Austrian Empire.

Sir, on the grounds of these principles and these facts, I submit to the Senate and to the people of the United States that certain propositions implied in the protest offered by the honorable Senator from Michigan, [Mr. Cass,] and fully and distinctly expressed in that presented by myself, are established, namely:

1. That the people of Hungary, in the exercise of rights secured to them by the Law of Nations, in a solemn and legitimate manner asserted their national independence, and established a government by their own voluntary act, and successfully maintained it against all parties lawfully interested in the question.

2. That the Emperor of Russia, without just or lawful right, invaded Hungary, and by fraud and armed force subverted the national independence and political constitution thus established, and thereby reduced that country to the condition of a province ruled by a foreign and absolute power.

3. That although the United States, from the necessities of political society, recognize the existing rule in Hungary, yet they are not indifferent to the usurpation and conquest by which it was established.

4. That they may lawfully protest against that conquest and usurpation, and against any new armed intervention by Russia to uphold it against the will of the people of Hungary, if it shall be expressed.

Sir, this being the whole of our case, and it being thus established, I ask why shall we not proclaim that just and lawful protest?

An honorable Senator [Mr. Miller] answers that we shall not speak because "the matter is foreign." But how is it foreign? Does it not arise in the family of nations, and are we not a member of that family, and interested in its welfare, and therefore in the laws by which that welfare is secured? There was a senate two thousand years ago, in which that objection provoked a rebuke from one who never indulged a thought of the republic that was not divine. "*Hæc lex socialis est*," said Cicero, "*hoc jus nationum exterarum est: Hanc habent arcem, minus aliquanto nunc quidem munitam quam antea; verumtamen, si qua reliqua spes est, quæ sociorum animos consolari possit, ea tota in hac lege posita est; cujus legis non modo a Populo Romano, sed etiam ab ultimis nationibus jampridem severi custodes requiruntur.*"

Another Senator [Mr. Clemens] tells us that interest is the first law of nations, and that an enlightened sense of interest offers no argument for such a course. Sir, granting the extraordinary rule thus assumed, the value of the objection depends on what consti-

tutes an interest. While it is true that this proceeding will not be directly compensated by either treasure or territory, it is equally clear that we need neither, and that the promise of both would constitute no adequate motive. The commerce of Hungary is, however, an interest to be secured by us; and inconsiderable as it must be under a despotism, it would expand under a republic. But as it is written for individual guidance, "Man shall not live by bread alone," so is it true of nations, that riches and aggrandizement are only means and not objects of government, and that states live and flourish not on merely physical elements, but just in the proportion that law, order, peace, justice, and liberty, are maintained in the commonwealth of nations. What expenses do we not incur, what armaments do we not sustain, to protect our national rights against apprehended injustice! How much more must we not expend, what greater armaments must we not provide, if we by silence or pusillanimity encourage attacks on the common welfare of nations? It was such an objection that the honorable and distinguished Senator from Kentucky [Mr. Clay] reproved on an occasion like this in the House of Representatives, twenty years ago, when he said: "I see, and I own it with infinite regret, a tone and a feeling in the councils of the country infinitely below that which belongs to the country." Sir, it is enough for us if there be a duty, for the great Lawgiver has never subjected either individuals or societies to an obligation, without attaching to the law a penalty for its neglect, and a reward for its fulfilment.

It has already appeared that there is a duty resting upon us, unless, indeed, the act proposed would involve an injury to some real interest of our own. The question, then, is not, what shall we gain, but what shall we lose, by the protest? In reply to this inquiry, the Senate Chamber and the country resound with alarms of war, and we are frightened with estimates of the boundless cost of the controversy, and with pictures of its calamities, fearful indeed if we are to be overborne, and still more terrible if we shall come off conquerors. Sir, I need no warnings of that kind. War is so incongruous with the dictates of reason, so ferocious, so hazardous, and so demoralizing, that I will always counsel a trial of every other lawful and honorable remedy for injustice, before a resort to that extreme measure of redress; and, indeed, I shall never counsel it except on the ground of necessary defence.

But if war is to follow this protest, then it must come in some way, and by the act of either ourselves or our enemy. But the protest is not a declaration, nor a menace, nor even a pledge of war in any contingency. War, then, will not come in that way, nor by or in consequence of our act. If war is nevertheless to come, it must come in retaliation of the protest, and by the act of Russia, or of Austria, or of both. Assume now that it shall so come, will it be just? The protest is a remonstrance addressed to the conscience of Russia, and, passing beyond her, carries an appeal to the reason and justice of mankind. As by the Municipal Law no remonstrance or complaint justifies a blow, so by the Law of Nations no remonstrance or complaint justifies a war. The war then would be unjust, and so the protest would be not a cause, but a pretext. But a nation that will declare war on a pretext, will either fabricate one or declare war without any. Let no one say that I misstate the character of this measure. It is neither untried nor new. Austria protested against the mission of Dudley Mann, and President Taylor's avowal of it. Did we go to war? Did anybody think that we ought or could go to war for that? No! we made a counter protest by the celebrated letter of the Secretary of State, [Mr. Webster.] Did Austria maintain her protest by a declaration of war? No; we are at peace with Austria yet, and I hope we shall be so forever. And now, honorable senators, I ask, if we are to shrink from this duty through fear of unjust retaliation, what duty shall we not shrink from under the same motive? And what will be the principle of our policy, when thus shrinking from obligations, but fear instead of duty?

And who are we, and who are Austria and Russia, that *we* should fear *them* when on the defence against an unjust war? I admit, and I hope all my countrymen will learn it without a trial, that we are not constituted for maintaining long, distant wars of conquest or of aggression. But in a defensive war levied against us on such a pretext, the reason and the sympathies of mankind would be on our side, co-operating with our own instincts of patriotism and self-preservation. Our enemies would be powerless to harm us, and we should be unconquerable.

Why, then, I ask, shall we refrain from the protest? The answer comes up on all sides. "Since, then, the measure is pacific, Russia will disregard it, and so it will be useless." Well, what if

it should? It will at least be harmless. But Russia will not disregard it. It is true that we once interpleaded between the belligerents of Europe twenty-five years by protests and remonstrances in defence of our neutral rights, and vindicated them at last by resistance against one party, and open, direct war against the other. But all that is changed now. Our flag was then a stranger on the seas, our principles were then unknown. Now, both are regarded with respect and affection by the people of Europe. And that people, too, are changed. They are no longer debased and hopeless of freedom, but, on the contrary, are waiting impatiently for it, and ready to second our expressions of interest in their cause. The British nation is not insensible to our emulation. If we only speak out, do you think that they will be silent? No, sir. And when the United States and Great Britain should once speak, the ever-fraternizing bayonets of the army of France, if there should be need, would open a passage for the voice of that impulsive and generous nation. Who believes that Russia, despotic as she is, would brave the remonstrances of these three great powers, sustained as they would be by the voice of Christendom? Sir, I do not know that this protest will do Hungary or European Democracy any good. It is enough for me that, like our first of orators [Mr. Webster] in a similar case, I can say, "I hope it may."

But it is replied that, if our protest shall be disregarded, we must resort to war to maintain it, and that Louis Kossuth has confessed so much. I shall not stay long on the quibble of the lawyers who claim to have circumvented the guest at the feast to which they had bidden him. It was so that some of old sought to entangle in constructions of their national traditions the Great Teacher, who came, not to dispute with doctors, but to call all men to repentance. This proceeding is mine, not that of the Hungarian neophyte in American politics. It is to be settled upon arguments here, not on concessions elsewhere. And now, sir, why must we go to war to sustain our protest? You may say, because we should be dishonored by abandoning an interest so solemnly asserted. Sir, those who oppose the protest are willing to forsake the cause of Hungary now. Will it be more dishonorable to relinquish it after an earnest effort, than to abandon it without any effort at all in its behalf? Sir, if it be mere honor that is then to prick us on, let the timid give over their fears. A

really great, enlightened, and Christian nation, has just as much need to make war on a false point of honor, as a really great, enlightened, and Christian man has need to engage in a personal contest in the same case; and that is no necessity at all. Nor shall we be reduced to the alternative of war. If Hungary shall never rise, there will be no *casus belli*. If she shall rise, we shall have right to choose the time when to recognize her as a nation. That recognition, with its political influence and commercial benefits, will be adequate to prevent or counterbalance Russian intervention. But I am answered, that we shall unnecessarily offend powers whom it is unwise to provoke. I reply, that it is not enough for a nation that it has no enemies. Japan and China are in that happy condition. It is necessary that a state should have some friends. To us, exemption from hatred obtained by insensibility to crime is of no value; still less is the security obtained by selfishness and isolation. Only generosity ever makes friends, and those that it does bring are grateful and enduring.

Again, then, I ask, why not vindicate the Law of Nations by our protest? One Senator [Mr. CLEMENS] draws an argument against the exercise of national sympathy from the character and conduct he imputes to Louis Kossuth, and represents him as having been reckless and uncalculating before danger approached, and weak and vacillating and shrinking when it was coming on; as having abandoned his country while he had yet one hundred and thirty-five thousand men; and as having surrendered the state unnecessarily or unwisely to one who for months he had believed a traitor: and as being, therefore, not a hero; and, finally, as addicted to military display, and irreverent of the ashes of Washington, and therefore not a republican.

Sir, if these assumptions were as correct and just as it has sufficiently appeared that they are erroneous, what would they or the objection raised upon them have to do here and now? This is a trial of Russia at the bar of the Public Justice of the World. How can the verdict be affected by any imagined misconduct of Louis Kossuth here, after Russian intervention in Hungary was ended, or even by any errors or misconduct before, of which Hungary alone, not Russia, had right to complain? The objection is as much out of season as out of place. The character of Louis Kossuth was a preliminary question, and has been decided by Congress with unexampled unanimity, and by a decree awarding such hon-

ors as the American people had before found none worthy to receive but the constant and generous Lafayette.

> "Gods, of whatsoe'er degree,
> Resume not what themselves have given."

Freedom, sir, often undervalues, and sometimes mistakes, her friends; but tyranny never is deceived in her enemies. Let the honorable Senator from Alabama, [Mr. CLEMENS,] convince the treacherous Bonaparte that Louis Kossuth is not a man to be feared, or the old and subtle Metternich that Louis Kossuth is not a man to be hated. Until then, we must stand upon the judgment we have already rendered.

Once more, then, I ask, why withhold our protest? The Senator from Alabama [Mr. CLEMENS] would reply, that Hungary is an integral part of the Austrian Empire, and that she will be entitled to our declaration only when she shall, by successful revolution, have established her independence. The form of my proposition defeats the objection. Hungary had always enjoyed and in that very way had re-established her independence when Russia intervened. Certainly those who maintain that we could not now employ force to separate Hungary from Austria, when Russia has united them by force, cannot deny our right to protest against the crime that Russia thus committed. It would indeed have been better to have protested during the period of the act itself. But the period was short, and we remote. The act is yet recent, and the prospect of a new attempt of Hungary continues the transaction, and renders a censure of the past and a protest against the apprehended renewal of Russian intervention important and seasonable.

There remains the objection, that flows so readily from all conservative pens and tongues on this side of the Atlantic, and still more freely from the stipendiary presses of Paris and Vienna, that a protest would be a departure from the traditional policy of our country, and from the precepts of Washington. It is passing strange, sir, that Louis Napoleon and Francis Joseph should take so deep an interest in our adherence to our time-honored principles, and in our reverence of the memory of him who inculcated them, not for the immunity of tyrants, but for the security of our own welfare. I know by hearsay that an association during our last contest with Great Britain clothed themselves with these same principles, and even with that illustrious name; that they called

themselves the Washington Benevolent Society, celebrated the nativity, and quoted the Farewell Address of Washington to embarrass the administration in what they were pleased to call an unjust and unholy war, even when it had become a war of national defence. I have known a faction, too, that planted themselves on the same sacred text, to confine to persons of American birth the privileges of American citizenship. A good cause needs not the sanction of that awful name. A bad one often seeks, although it cannot justly claim it. Therefore, I always take the liberty to look underneath the mantle of Washington, on whosesoever shoulders I find it.

Sir, granting for a moment that Washington inculcated just such a policy as is claimed by my opponents, is it so entirely certain that it ought always and under all circumstances to be pursued? Here is a message of his that illustrates the policy he adopted toward, not one only, but all the Barbary powers, and it received, I think, the unanimous and favorable response of the Senate of the United States:

"May 8, 1792.

"*To the Senate of the United States:*

"If the President should conclude a convention or treaty with the Government of Algiers for the *ransom* of the thirteen American citizens in captivity there, for a sum not exceeding $40,000, all expenses included, will the Senate approve the same? If the President should conclude a treaty with the Government of Algiers, for the establishment of a *peace* with them, at an expense not exceeding $25,000, paid at the signature, and a like sum to be paid *annually* afterward during the continuance of the treaty, would the Senate approve the same? "GEO. WASHINGTON."

Sir, you and I and all of us would have answered in the affirmative to these questions, had we lived and occupied these places in the last century. I desire to ascertain how many votes such a treaty would receive here now? And I address myself to the honorable Senator from Rhode Island, [Mr. CLARKE,] who moved resolutions against any departure from the policy of Washington. Would you, sir, pay a Barbary Pirate $40,000 to ransom thirteen captives? and $25,000 bonus, and $25,000 annually, for exemption from his depredations? He looks dissentingly. I appeal to my emulous friend from New Jersey, [Mr. MILLER.] Would you, sir? No, not I. I demand from the other honorable Senator from New Jersey, [Mr. STOCKTON,] who, in the triple character of Senator, Commodore, and General, presided at the Birthday Congressional Banquet in honor of Washington, and dishonor of his Hungarian disciple, Kossuth, would you, sir? No, not he. All who

are in favor of such a treaty, let them say, Aye. What, sir! not one vote in the Senate of the United States for the continuance of what was in its time a wise and prudent as well as humane policy of Washington! No, not one. And why, sir? The answer is easy: The times have changed, and we have changed with them. No one has ever thought that the Spartans wisely continued the military monastery after their state was firmly established. No one ever has thought that the rape of the Sabine women by the Romans was a policy to be perpetuated.

But, sir, to come to that part of Washington's policy which is directly in question. I shall maintain that it was this. It consisted in avoiding new *entangling alliances* and *artificial* ties with one of the belligerent powers in a general European war, but it admitted of expressions, assurances, and manifestations of sympathy and of interest in behalf of nations contending for the principles of the American Revolution, and of protest, earnest and decided, against the intervention of foreign powers to suppress these principles by force; and this, just as I have defined it, is the traditional policy of the United States, and it has been pursued until this very day and this very hour.

Mr. President: I might well excuse myself from proving the truth of this proposition, inasmuch as, on the principles I have established, the United States, being a moral person, could not but cherish all that devotion to their own just and true system of politics which the policy I have described implies; and being, moreover, an enlightened as well as generous power, they could not but desire to see it successfully adopted by other nations; and being, finally, a free nation, they could not fail to speak out their sympathies with those who might be struggling to adopt it, and to utter their indignation at armed intervention by despotic powers to deprive them of a right so absolute, and of benefits so inestimable. Least of all could George Washington, the highest human personation of justice and benevolence, have inculcated any other policy than that which I have described. But the issue is one of profound and lasting importance. And therefore history shall prove my proposition to be true, and vindicate my country and her immortal founder.

Political philosophy, as the last century was approaching its close, was engaged in an effort to discover the true theory of government. The American Revolution terminated the dispute, by

presenting a practical experiment of a free representative government, directly established by the people, and depending not merely for administration, but for continuance, upon their ever-renewed, constant, and direct activity. France, with mingled motives of previous favor to the new system, and of opposition to a hereditary rival, had recognized the United States at an early day, and granted them seasonable and effective aid, and bound them to her by a treaty of mutual and eternal guaranty and alliance. The French Revolution of 1789 was the American Revolution beginning a new career in Europe. When, in 1792, a popular constitution had been received by Louis XVI, he announced his acceptance of it to the several nations, and with very different results. It roused all the monarchies of Europe, sooner or later, to a mighty and combined effort for the extinguishment of the popular cause in France, as a necessary measure of security to the ancient system. On the contrary, the President of the United States transmitted the virtuous, but irresolute king's letter to Congress. The House of Representatives, in their reply, assured him of their "sincere participation in the interest of the French nation on that great and important event, and of their wish that the wisdom and magnanimity displayed in the formation and acceptance of the constitution might be rewarded by the most perfect attainment of its object—the permanent happiness of so great a people." This, sir, was the first salutation to republicanism in Europe by the Government of the United States, and it was, in effect, a protest against the armed intervention then organizing beyond the Rhine. Sardinia and Austria, on the other hand, entered immediately into a treaty, and were soon afterward followed by Russia, the Netherlands, and Great Britain—and thus was established the first combination, under the name of the Allied Powers, to oppose by force the principles of the American Revolution. To establish this point, it is necessary to refer only to Wheaton's History of the Law of Nations: "It was an armed intervention to restore the ancient order of things in France, and against the principles of the French Revolution, deemed to be of dangerous example and contagious influence on the neighboring monarchies."

On the 22d of April, 1794, when France had adopted the republican system, and had driven beyond her borders the allied powers who had entered them to vindicate the cause of the deposed and executed monarch, the Committee of Safety, exercising the execu-

tive functions of the State, announced by letter to our Congress, that "a national government had been born in France, and with it victory; that internal order had been restored, and that the conspirators against the republic had fallen;" and they declared their desire to "draw closer than ever before the bonds of friendship which united the French Nation and the United States." The Senate, in reply, assured the Committee of Safety of their "friendship and good will for the French Republic," and the House of Representatives declared themselves duly impressed "by the friendly and affectionate manner in which they had been addressed," and tendered "an *unequivocal* assurance that the Representatives of the people of the United States had much interest in the happiness and prosperity of the French Republic."

The question of a *closer political alliance* and of more intimate *artificial ties* with France, thus presented formally by the Committee of Safety, was urged upon Washington with discourtesy and vehemence by agents of that nation. He met the demand, and denied it emphatically, by the Proclamation of September, 1794, in which he declared that, in compliance with duty and interest, the United States would assume and maintain a neutral attitude in the war then raging in Europe. Disappointed as France was, the Convention of that Republic nevertheless, within six months afterward, ordered the American flag to be displayed as a symbol of their principles in the hall of their debates, and received it, when presented for that purpose by the American Minister, with enthusiastic demonstrations of respect and fraternal affection toward the American people.

Sixteen months after the date of the proclamation, and while it continued to regulate the action of the government, Washington received the French Minister, Adet, with a letter from the Committee of Safety, and the tri-colored standard of the French Republic, on the first day of the new year—a day specially appointed, because it was a day of general joy and congratulation. The committee by that letter informed the United States that they had received, with rapture, assurances of sympathy, which had been given to them by the American Minister in Paris, and added that they were well aware that the United States truly understood that the victories of the French strengthened their own independence and happiness. Washington replied, that "his anxious recollections, his sympathetic feelings, and his best wishes, were irresisti-

bly excited whenever he saw in any country an *oppressed* nation unfurl the banner of freedom; and that, above all, the events of the French Revolution had produced in him the deepest solicitude, as well as the highest admiration." Rising into a tone of earnestness and enthusiasm, unusual with that seemingly imperturbable magistrate, he added:

"I rejoice that the interesting revolutionary movements of so many years, have issued in the formation of a constitution designed to give permanency to the great object for which you have contended. I rejoice that *Liberty*, of which you have been the invariable defenders, now finds an asylum in the bosom of a regularly organized government —a government which, being formed to secure the happiness of the French people, corresponds with the ardent wishes of my heart, while it gratifies the pride of every citizen of the United States by its resemblance to their own. May the friendship of the two republics be commensurate with their existence."

The Senate on that occasion declared that they "united with Washington in all the feelings he had so ardently and so sublimely expressed." The scene in the House of Representatives was among the most inspiring ever exhibited in the Natal Halls of American Independence. On taking the chair, the Speaker announced to the House that they would receive a communication which would excite the most pleasing satisfaction in every American heart, and cautioned the representatives and the people in attendance to confine the fervor of their enthusiasm within the restraints of propriety and dignity. Washington's message was read, the colors of the French nation were received and unfurled, the letter of the Committee of Safety was submitted and considered, and thereupon the representatives unanimously resolved, amid acclamations in and around the chamber, that they "received the communication of France with sincere and lively sensibility, and that they deemed the presentation of the colors of the French Republic a most honorable testimony of the existing sympathy and affections of the two republics, founded on their solid and reciprocal interests, and that they rejoiced in the opportunity of congratulating the French Republic on the brilliant and glorious achievements accomplished under it, and that they hoped that those achievements would be attended with a perfect attainment of their objects—the liberty and happiness of that great people." Sir, were not these ceremonies a demonstration of sympathy with Democracy in Europe? The victories thus celebrated were won from the allied powers combined to oppress France by force. Were not these ceremonies a protest against their unlawful intervention?

Nevertheless, the United States persevered in the course marked out by the proclamation; and Washington, in his Farewell Address, published a year later, declared, in language truly quoted here, that the great rule of conduct for us in regard to foreign nations was in extending our commercial relations, to have as little political connection with them as possible, and to avoid implicating ourselves by artificial ties in the ordinary vicissitudes of European politics, and in the ordinary combinations and collisions of national friendships and enmities. Sir, that policy was necessary, and for that reason, if for no other, was wise. The flames of war raged throughout Western Europe, and its lurid blaze lighted up the ocean. Both the belligerents recklessly turned pirates, and supplied themselves by the robbery of our unarmed, unprotected merchant vessels. Great Britain still, in violation of the recent treaty of peace, held the military posts on our western borders, and had control of the passions of the savages among and around us, and was only waiting a pretext for a decisive blow at our newly-acquired independence; and France was seeking at the same time to involve us in the strife, and to force us to give the pretext. Nevertheless, impatient as she was for our co-operation, she was herself deranged and disorganized, adopting every year a new constitution, and nearly every month taking for her executive organ some new and more reckless and ferocious cabal, and thus was unable to assure us against the treachery of her own domestic factions. Well did Jefferson, Secretary of State to Washington, while defending the policy of his immortal chief, declare that if the United States "had panted for war as much as ancient Rome—if their armies had been as effective as those of Prussia—if their coffers had been full and their debts annihilated"—even then peace would have been too precious to have been put at hazard against odds so fearful, with an ally more dangerous than the enemy. And what was the condition of the United States, that they should have periled all in the domestic fury of France, or on the angry tide of her foreign conflicts? An infant country, sunk deep in debt, without any land or naval force, with an armed enemy on her borders, and from necessity paying tribute at the same time to the African Corsairs; nay, worse—unable to obtain their forbearance, because unsuccessful in borrowing funds to pay the tribute money. What less than madness would it have been to have entered into closer alliance, and to have assumed more in-

timate ties with a nation whom they could not have aided, and in going to whose help they would have been certain to have perished. *Salus Populi est suprema lex.* Neutrality was a necessity, and therefore a duty.

I admit that the policy of the proclamation was continued throughout the whole war, until its close in 1814. Yes; and I confess, moreover, that congratulations and protests ceased with the last imposing ceremony I have described. But the explanation of both of these facts is at hand. The jealousy of the belligerents did not abate, and the parties changed objects and characters. When France was well nigh exhausted by factions, the republic went down, and in its place arose, of course, a dictator, and afterward an empire. She who had at first taken arms in defence of national rights against external intervention, afterward carried war into the bosoms of the intervening states who now resisted their late enemy to save Europe from an armed military despotism. The United States had no longer a cause in Europe to congratulate, to protect, or to defend.

But the American Revolution broke out soon in another region. As early as 1810, the Spanish provinces of South America declared their independence, and resorted to arms with brilliant success. The allied powers of Europe, flushed with the recent triumph over Napoleon, frowned on the new Western Republics. The United States held at first a subdued tone, in consequence of severe experience in their war with England then just closed. Nevertheless, they regarded the controversy between the colonies and Spain, not as an ordinary insurrection, but as a civil war between parties nearly equal; while the President, Monroe, asked Congress for a law to render the neutrality code more stringent. The design was alleged to be to prevent the departure of ships built at Baltimore for the new states. This policy was too cold and prudent for the great popular leader in that day in the House of Representatives, [Mr. Clay.] He proclaimed that the President, in his anxiety to stand erect, leaned against freedom; and, alluding to Spain and the Holy League as oppressors of South America, he declared "he had no sympathy with tyrants." The President dispatched commissioners to seek information of the condition and prospects of the insurgents, just as President Taylor recently did in behalf of Hungary, and with the same object. But the great exponent of American Republicanism was not satisfied, and he thereupon

moved in the House of Representatives an appropriation for a direct embassy to the Republic of the Rio de La Plata. In support of that motion, he demanded, with noble, spirit-stirring vehemence: "Are we not bound upon our own principles to acknowledge the new republic? If *we* do not, *who* will? Are we to expect that *kings* will set us the example of acknowledging the only republic on earth except our own?"

A year later, the President, Monroe, taking bolder ground, intimated to Congress and to the world quite distinctly the interest with which the United States regarded the consultations of the Holy League. After saying, in the courtly language of diplomacy, that they had undertaken to *mediate* between Spain and her colonies, he expressed a very confident belief that they would confine their interposition to the expression of their sentiments, abstaining from force. What was this, sir, but an expression of sympathy with the republics, and a protest against armed intervention by the Holy League of Europe?

One more year ripened these sentiments into action. "It is not in the power of a virtuous people," said the President, "to behold a conflict so vitally important to their neighbors without the sensibility and sympathy naturally belonging to *such a cause*." And after announcing that he had tried to engage the co-operation of other powers to influence Spain, he added, certainly very much in the spirit of the present proceedings, that, "should it become manifest to the world that the efforts of the parent state to subdue the colonies would be fruitless, it might be presumed that she would relinquish them."

The House of Representatives, either thinking that the probable issue was already manifest, or unwilling to wait for the permission of other powers, at once replied to the President, that they were even then ready to provide for diplomatic relations with the new republics; and they tendered to him their constitutional support of a recognition of them whenever he should be pleased to grant it. They marked this decisive declaration by the unusual formality of sending a committee to announce their determination to the President, at the head of which was justly placed the now distinguished Senator from Kentucky, [Mr. Clay.] A medal commemorating the civic achievements of that eminent leader has been recently struck. One of its inscriptions recites this great triumph in behalf

of freedom in South America. Sir, in my judgment, it was the noblest of them all.

Long after the recognition of the South American republics, the Holy League continued to entertain the appeal of Spain for their intervention. But the spirit of the American people would no longer brook such an unlawful act. In 1823, the President [Monroe] atoned for all past hesitation by that decisive and memorable protest, in which, after urging the inapplicability of the principles before held by our government on the subject of intervention to the case of the South American states, he avowed that it "was due to candor and to the amicable relations existing between the United States and the Allied Powers of Europe, to declare that we should consider any attempt on their part to extend their system to any part of this hemisphere as dangerous to our own peace and safety. . . . . And that, while we should still remain neutral in the contest, our position would change if their intervention should render it necessary."

The Holy League, nevertheless, kept on secretly consulting on mediation with the sword for the good of the people of this continent, until John Quincy Adams, President, not appreciating their benevolence nor having the fear of force before his eyes, accepted for the United States, with the support of Congress, an invitation to attend a meeting of the new brotherhood of American Republics, called to discuss measures for the common safety and welfare. While explaining the reasons for that measure, that incorruptible and indomitable magistrate thus renewed the protest of his predecessor:

"To the question, 'Whether the Congress of Panama, and the principles which may be adjusted by it, may not give umbrage to the Holy League of European powers, or offence to Spain,' it is a sufficient answer, that it can give no just cause of umbrage or offence to either, and that the United States will stipulate nothing there which shall give such just cause. Here the right of inquiry into our purposes and measures must stop. The fear of giving umbrage to the Holy League of Europe was urged as a motive for denying to the American nations the acknowledgment of their independence. That it would be viewed by Spain as hostile to her was not only urged, but directly declared by herself. The Congress and the administration of that day consulted their rights and duties, and not their fears. Neither the representation of the United States at Panama, nor any measure to which their assent may be yielded there, will give to the Holy League, or any of its members, or to Spain, the right to take offence. For the rest, the United States must still, as heretofore, take counsel from their duties, not their fears."

And now, sir, the scene changes once more to Europe. Two thousand years ago, mercurial, vivacious, spiritual Greece, after continued and restless activity, fell asleep, and during her long slumber the false prophet of the Koran bound her limbs with hate-

ful and corroding chains. Within our day she moved, and awaked, and rose from the earth, and seized and attempted to break the instruments of her bondage. It was the spirit of the American Revolution, passing by, that roused her from that lethargy to that noble achievement. The Holy League of Europe, that had trampled freedom beneath their feet in France, and menaced it so long in South America, consulted how to crush it in the land of Homer and Pericles and Alcibiades. Greece, confined within her miniature islands and her narrow peninsula, was to us a stranger, a shadow of a name, known to us only by her primitive instructions in all philosophy, by her perfection in all ennobling arts, and by her nursing care of our holy religion. But for all that we were not indifferent; and although despotic Europe offered to unite with superstitious and despotic Asia for her subjugation, we were encouraged by the humane sympathies of the world, and did not quite fear to speak out. "It is impossible," said the President, [Monroe,] "to look to the oppressions of Greece without being deeply affected. A strong hope is entertained that that people will secure their independent name and their equal standing among the nations of the earth. From the facts which have come to our knowledge, there is good cause to believe that the enemy has lost all dominion over them, and that Greece will become an independent nation. That she may obtain that rank, is the object of our wishes." This expression of sympathy for Greece, and this protest against the cruelty and oppression of her tyrant, was reiterated every year until, by the armed intervention of other generous powers, their object, the emancipation of that people, was obtained. Who can say now how much they did not contribute toward that gratifying result?

Mr. President: just after the revolution of France in 1830, I had the honor to visit Lafayette in La Grange. The porch of his chateau was ornamented with two brass field-pieces captured from the army of Charles X. by the citizens of Paris, and presented to its noble proprietor. The hall of entrance was decorated with the mingled drapery of the tri-colored flag of his own country and the stars and stripes of ours. And there he was in retirement, cheerful and hopeful, although disgusted by the treachery of the Citizen King against the principles of the American Revolution, to which he owed his throne. "Sir," said Lafayette, "Louis Philippe will be king some seventeen or eighteen years; but no son of his will

ever sit on a throne in France." That longest period had not elapsed when the throne in the Tuilleries disappeared, and the false monarch was an exile in England. We all recollect that the American Minister, without waiting for a permanent organization of the nation, or for instructions from home, or for intelligence of the dispositions of the monarchs of Europe, hastened to intervene and commit his country by saluting the new republic. The President [Polk] acted with equal promptness and decision.

> The world [said he to Congress] has seldom witnessed a scene more interesting and sublime than the peaceful rising of the French people, resolved to secure to themselves enlarged liberty, and to assert, in the majesty of their strength, the great truth, that, in this enlightened age, man is capable of governing himself. The prompt recognition of her new Government by the representative of the United States meets my full and unqualified approbation. The policy of the United States has ever been that of non-intervention in the domestic affairs of other countries—leaving each to establish the form of government of their own choice. While this wise policy will be maintained towards France, now suddenly transformed from a monarchy into a republic, all our sympathies are naturally enlisted on the side of a great people who, imitating our example, have resolved to be free. . . . . Our ardent and sincere congratulations are extended to the patriotic people of France, upon their noble and thus far successful efforts to found for their future government liberal institutions similar to our own."

Congress echoed these just sentiments, and, in the name and behalf of the American people, "tendered their congratulations to the people of France upon the success of their recent efforts to consolidate the principles of liberty in a republican form of government."

Mr. President: a spark from the flame which, thus breaking out in Paris, was regarded with so much pleasure here, kindled the material which had been long gathered and prepared by Louis Kossuth and his compatriots in Hungary. Remote as we were, we watched and followed the revolution in that ancient country with intense interest. We had an agent there ready to tender our congratulations; but the cause went down under the iron pressure of Russian intervention. When we could do no more, we sought the exiled chief in Turkey, procured his release from duress and surveillance; and while the Russian and Austrian monarchs, with menaces, demanded his surrender to them by the Ottoman, we brought him, with the ovation of a conqueror, under protection of our flag, down the Mediterranean, across the ocean, and home to our own shores, and received him with honors that have divided the homage of mankind between ourselves and him.

Sir, even while this slow and languid debate has been going on, we have interceded—informally, indeed, but nevertheless we have

interceded—with Great Britain for clemency to imprisoned patriots who, under auspices hopeless, but under the pressure of national evils quite intolerable, had attempted to renew the American Revolution in Ireland. And you and I, and every Senator here, whether he suppresses utterance as some may do, or speaks out as I do, is earnestly hoping that that act of intercession may prevail with the amiable and virtuous monarch who wields a benignant sceptre over those realms.

Here, sir, the history ends. I will add no glosses to the recital. I will not attempt to simplify the subject, involved as it is in the confusion resulting from the want of definitions of intervention, and from the neglect to discriminate between intervention in the domestic affairs of a nation and opposition against the flagrant act of a strong foreign power in attacking, without just cause or motive, a weak but brave one struggling with its proper enemy. I shall not ask the Senate or the country to distinguish between intercession, solicitation, or protest, on the one side, and armed intervention, entangling alliances, and artificial ties, on the other. I will only say that either this Protest is not an Intervention, or we have done little else than to intervene in every contest for Freedom and Humanity throughout the world since we became a nation. That if this act be wrong, we have never done right. If we approve and own the precedents of our predecessors, this act is one which cannot be justly or wisely omitted. The question before us, then, is not whether we shall depart from our traditional policy, but whether we shall adhere to it.

Inasmuch as some will say that I have presented, in too strong relief, the action of the government in behalf of freedom, I call now on those who maintain that its policy has been one of indifference, to show one act that the United States ever committed, one word that they ever spake, or one thought that they ever indulged, of congratulation, of sympathy, or even of toleration, toward a falling despotism or a successful usurpation.

Having vindicated my country and her statesmen against the implications of indifference, coldness, and isolation, I hope it will not now be thought presumptuous on my part, or irreverent to the memory of Washington, or dangerous to the state, if I inquire on what principle the duty of neutrality was founded by that illustrious man, and whether he enjoined that policy as one of absolute and perpetual obligation? "The duty of holding a neutral con-

duct," said he, in his Farewell Address, "may be inferred without any thing more from the obligation which justice and humanity impose on every nation in cases in which *it is free to act* to maintain inviolate the relations of peace and amity toward other nations." Our "freedom," in that case, resulted from the circumstances which excused us from co-operating with France, notwithstanding our treaty of alliance; and the exercise of "justice and humanity" was in favor of our own people. "The inducements of interest for observing that conduct, (said he), will best be referred to your own reflections and experience. With me, a *predominant motive* has been to endeavor to *gain time* to settle and mature its yet recent institutions, and to progress without interruption to that degree of strength and constancy which is necessary to give it, humanly speaking, the command of its own fortune."

I will not venture on such a question as whether humanity and justice may not, in some contingencies, require that we should afford substantial aid to nations as weak as we were in our revolutionary contest when we shall have matured our strength. Nor will I inquire whether time enough has not been already gained to give us, speaking always with a due sense of dependence on an ever-gracious Providence, the command of our own fortune.

It is clear enough, however, that we distrust our strength seldom, except when such diffidence will serve as a plea for the nonperformance of some obligation of justice or of humanity. But it is not necessary to press such inquiries. What is demanded here is not any part of our fifty millions of annual revenue, nor any use of our credit, nor any employment of our army or of our navy, but simply the exercise of our free right of speech. If we are not strong enough now to dare to speak, shall we be bolder when we become stronger? If we are never to speak out, for what were national lungs given us?

Senators and Representatives of America, if I may borrow the tone of that sturdy republican, John Milton, I would have you consider what nation it is of which you are governors—a nation quick and vigorous of thought, free and bold in speech, prompt and resolute in action, and just and generous in purpose—a nation existing for something, and designed for something more than indifference and inertness in times of universal speculation and activity. Why else was this nation chosen, that "out of her, as

out of Sinai, should be proclaimed and sounded forth the first tidings and trumpet" of political reformation to all nations? I would have you remember that the love of liberty is a public affection which this nation has deeply imbibed and has effectually diffused throughout the world; and that she cannot now suppress it, nor smother her desires to promote that glorious cause, for it is her own cause.

Mr. President: I thought that after answering the objections against this protest, I would show affirmatively why it ought to be adopted. But with the disappearance of opposing arguments, the reasons in favor of it have risen with sufficient distinctness into view. I will only add that it is time to protest. The new outworks of our system of politics in Europe have all been carried away. Republicanism has now no abiding place there, except on the rock of San Marino and in the mountain home of William Tell. France and Austria are said to be conspiring to expel it even there. In my inmost heart, I could almost bid them dare to try an experiment which would arouse the nations of Europe to resist the commission of a crime so flagrant and so bold.

I have heard frequently, here and elsewhere, that we can promote the cause of freedom and humanity only by our example, and it is most true. But what should that example be but that of performing not one national duty only, but all national duties; not those beginning and ending with ourselves only, but those also which we owe to other nations and to all mankind? No dim eclipse will suffice to illuminate a benighted world.

I have the common pride of every American in the aggrandizement of my country. No effort of mine to promote it, by just and lawful means, ever was or ever will be withheld. Our flag, when it rises to the topmast or the turret of an enemy's ship or fortress, excites in me a pleasure as sincere as in any other man. And yet I have seen that flag on two occasions when it awakened even more intense gratification. One was when it entered the city of Cork, covering supplies for a chivalrous and generous but famishing people. The other was when it recently protected in his emigration an exile of whom continental Europe was unworthy, and to whom she had denied a refuge. Sir, it raised no surprise and excited no regret in me, as it did in some, to see that exile and that flag alike saluted and honored by the people, and alike feared and hated by the kings of Europe.

Let others employ themselves in devising new ligaments to bind these states together. They shall have my respect for their patriotism and their zeal. For myself, I am content with the old ones just as I find them. I believe that the Union is founded in physical, moral, and political necessities, which demand one government, and would endure no divided states; that it is impregnable, therefore, equally to force or to faction; that Secession is a feverish dream, and Disunion an unreal and passing chimera; and that, for weal or woe, for liberty or servitude, this great country is one and inseparable. I believe, also, that it is Righteousness, not greatness, that exalteth a nation, and that it is Liberty, not repose, that renders national existence worth possessing. Let me, then, perform my humble part in the service of the republic, by cultivating the sense of justice and the love of liberty which are the elements of its being, and by developing their saving influences, not only in our domestic conduct, but in our foreign conduct also, and in our social intercourse with all other states and nations.

It has already come to this—that whenever in any country an advocate of freedom, by the changes of fortune, is driven into exile, he hastens to seek an asylum here; that whenever a hero falls in the cause of freedom on any of her battle-fields, his eyes involuntarily turn toward us, and he commits that cause with a confiding trust to our sympathy and our care. Never, sir, as we value the security of our own freedom, or the welfare and happiness of mankind, or the favor of Heaven, that has enabled us to protect both, let that exile be inhospitably repulsed. Never let the prayer of that dying hero fall on ears unused to hear, or spend itself upon hearts that refuse to be moved.

NOTE.—LOUIS KOSSUTH arrived in this country on the 4th day of December, 1851, having been invited hither by a joint resolution of Congress. He reached Washington on the 30th day of the same month. The Senate had appointed a committee (Senators Cass, Seward and Shields) to wait upon him on his arrival. A welcome to the country and to the Capitol had been extended to him by an almost unanimous vote of both Houses, six in the Senate and sixteen in the House, only, voting in the negative. He was formally received also by the President, Mr. Fillmore, by the Secretary of State, Mr. Webster, and by Henry Clay. A public dinner was given to him in Washington, at which Daniel Webster, Senators Cass and Douglass made long and eloquent speeches avowing substantially their assent to the doctrine that the United States ought to interfere to prevent Russian intervention against the independence of Hungary.—ED.

AMERICAN STEAM NAVIGATION.

APRIL 27, 1852.

What will Congress do—what has Congress done—for the Collins steamers? These are questions which meet every visitor returning from the capital on his arrival at New York, and which every traveller from America encounters, on 'Change in Liverpool and London, and in the Courts of Paris and St. Petersburg. There is reason enough for all this curiosity and interest among the merchants and statesmen of the two continents.

Under a contract with the United States, made on the 19th of April, 1849, between E. K. Collins, James Brown, and Stewart Brown, merchants of New York, and the United States, those persons now prosecute, between the ports of New York and Liverpool, forty voyages across the ocean, or twenty outward and inward voyages, annually, in steamships, carrying freight and passengers on their own account, and also public mails on account of the United States, and receive from the treasury, as a compensation for that service, three hundred and eighty-five thousand dollars a year, which is equivalent to somewhat more than $19,000 for each outward and return passage. The Committee on Finance propose an amendment to the annual Deficiency Bill, the effect of which is to increase the number of mails and voyages from twenty to twenty-six, and the compensation from $19,000 to $33,000 for each voyage.

Ought this measure to be adopted?

I assume, for the present, that the existing enterprise is to be perseveringly sustained. In that view a question arises—

Whether the proposed increase of mail service is expedient?

When this line was established, the British Cunard steamers, consisting of seven vessels, were making semi-monthly voyages and carrying semi-monthly mails between the same ports during the eight temperate months, and monthly mails during the four other months; and thus they had a monopoly of steam ocean post-

age between the two countries. We authorized the Collins line to carry just the same number of mails, alternating with the Cunard steamers; and so we broke up the monopoly, and divided the postages of the route equally with Great Britain. So far, all was right and well. But recently the Cunard steamers have continued their semi-monthly mails throughout the whole year, while ours were limited to the eight temperate months; and so the equality of postage revenues has been subverted, and the early British monopoly has been partially restored. By the proposed increase of mails we shall exactly alternate again; and on every day that an American or European mail steam-vessel shall leave New York, one of the other line will leave the opposite port; and so the monopoly will again be broken, and the complete equality of postage revenues will be re-established. We must do just this, or relinquish, in an important degree, the great postal object of the enterprise. The Postmaster-General, and the Secretary of the Navy, and the Senate's Committees on the Post Office, on Naval Affairs, and on Finance, agree that the service must be thus increased, if it is to be at all continued. The increase, then, is not merely expedient, but even necessary and indispensable.

Assuming now that the service is to be increased, a question comes up—

Is the increase of compensation from $19,000 *to* $33,000 *per voyage just and reasonable?*

It *is* just and reasonable, if *necessary*. It is clear that some increase is necessary. The proprietors decline to make the six new voyages for nothing, and even to make them for $19,000 a voyage. We cannot oblige the contractors to make them for that compensation, nor even to make them for any compensation, for they are beyond the contract. No one else offers to make them on those terms, or, indeed, on any terms. We must therefore apply to Mr. Collins and his associates to enlarge the contract. But opening the contract for enlargement, opens it for revision. They consent to enlarge, but they equally appeal to us to remodel it; and they assign the reason, that while the average cost of each voyage is $65,216 64
the average receipts are only - - - - - 48,286 85

and that they incur an average loss of - - - 16,928 79

and an aggregate loss annually of - - - - $338,574 40

They further show that a capital of three millions invested has paid no dividends, and been reduced by inevitable losses to a little more than two and a half millions; that their stock is sold in Wall street at fifty cents on a dollar; and that, even if they would, yet they cannot dispatch another ship or mail after the 15th of May next. Something must be allowed, if not for profits, at least for renovation; and so the actual loss on each voyage being in round numbers $17,000, it is quite certain that an increase of not less than $19,000 is necessary to keep the steamers in vigorous and sure operation.

All questions of the fairness of this showing are precluded by the offer of the contractors to relinquish the enterprise to the United States, or to any assignee indicated by them, after the contract shall have been remodelled, and by the neglect of any other party to propose for a new contract, even on the terms thus recommended.

So, the increase of compensation solicited is just and reasonable, and is, moreover, like the increase of the mail service, necessary and indispensable.

Now, sir, we have arrived at the very question of the whole question. We must do just what is thus proposed, or relinquish the contract altogether.

The honorable Chairman of the Committee on Finance, [Mr. Hunter,] dissenting from his associates, advises that alternative. Sir, with a profound respect for that distinguished senator, not now for the first time, nor for mere effect, expressed, I must have his pardon, nevertheless, for preferring the authority of his associates. Extreme caution is apt to be the fruit of the patient and patriotic labors of his office. An appropriation bill seldom has passed this House without calling forth from him or his predecessors eloquent yet groundless alarms of an exhausted treasury, and of impending taxation, if not bankruptcy.

While we cannot, without wounding the national sensibilities and impairing the national character, abandon any great enterprise, it is equally true that indecision is among the worst vices of the statesman, and that vacillation in the conduct of public affairs is fruitful of national demoralization, and indicative of certain national decline. Persistence, when practicable, invigorates national energies, discourages foreign rivalry, and prevents foreign insult and aggression. Compare France—enlightened,

vigorous, and energetic, but unstable as water—with England, cautious, constant, and persevering, or even with Russia, unimpassioned and cold as her climate, yet with her eyes unswervingly and forever fixed on Stamboul, and you have an apt illustration of my moral. Nevertheless, these general observations are inconclusive, and I grapple therefore cheerfully with this great question.

If this enterprise must be abandoned, it must be for one of two reasons, namely: either because—

1. *It was erroneously conceived;* or because, 2. *It has been rendered unnecessary, unwise, or impracticable, by subsequent events and circumstances.*

1. *Was it erroneously conceived?* To determine this question, we need to ascend some high eminence of time, from which we can look back along the past, and pierce, as far as is allowed to human vision, through the clouds and darkness that rest upon the future. Come, then, Senators, and suppose that you stand with me in the galleries of St. Stephen's Chapel, on a day so long gone by as the 22d of March, 1775. A mighty debate has been going on here in this august Legislature of the British Empire. Insurrection against commercial restriction has broken out in the distant American colonies; a seditious assembly in Philadelphia has organized it; and a brave, patient, unimpassioned, and not untried, soldier of Virginia, lies, with hastily-gathered and irregular levies, on the heights of Dorchester, waiting the coming out of the British army from Boston. The question whether Great Britain shall strike, or concede and conciliate, has just been debated and decided. Concession has been denied. A silence, brief but intense, is broken by the often fierce and violent, but now measured and solemn, utterance of Burke: "My counsel has been rejected. You have determined to trample upon and extinguish a people who have, in the course of a single life, added to England as much as she had acquired by a progressive increase of improvement, brought on, by varieties of civilizing conquests and civilizing settlements, in a series of seventeen hundred years. A vision has passed before my eyes; the spirit of prophecy is upon me. Listen, now, to a revelation of the consequences which shall follow your maddened decision. Henceforth, there shall be division, separation, and eternal conflict in alternating war and peace between you and the child you have oppressed, which has inherited all

your indomitable love of liberty and all your insatiable passion for power. Though still in the gristle, and not yet hardened into the bone of manhood, America will, within the short period of sixteen months, cast off your dominion and defy your utmost persecution. Perfecting the institutions you have not yet suffered to ripen, she will establish a republic, the first confederate representative commonwealth, which shall in time become the admiration and envy of the world. France, the hereditary rival whom, only twenty years ago, with the aid of your own colonies, you despoiled of her North American possessions, though they had been strengthened by the genius of Richelieu, will take sweet revenge in aiding the emancipation of those very colonies, and thus dismembering your empire. You will strike her in vain with one hand, while you stretch forth the other to reduce your colonies with equal discomfiture. And you, even you, most infatuated yet most loyal Prince, will within eight years sign a treaty of peace with the royal Bourbon, and of independence with republican America! With fraud, corruption, fire and sword, you will compensate England with conquests in the East, and within half a century they will surround the world, and the British flag shall wave over provinces covering five millions of square miles, and containing one-sixth of the inhabitants of the globe. Nor shall you lose your retaliation upon your ancient enemy; for she, in the mean time, imbibing and intoxicated by the spirit of revolution in her American affiliation, shall overthrow all authority, human and divine, and, exhausting herself by twenty-five years of carnage and desolation throughout continental Europe, shall at last succumb to your victorious arms, and relapse, after ineffectual struggles, into the embraces of an inglorious military despotism. Yet, notwithstanding all these unsurpassed conquests and triumphs, shall you enjoy no certain or complete dominion. For, on the other hand, wild beasts and savage men and uncouth manners shall all disappear on the American continent; and the three millions whom you now despise, gathering to themselves increase from every European nation and island, will, within seventy-five years, spread themselves over field and forest, prairie and mountain, until, in your way to your provinces in the Bahamas, they shall meet you on the shores of the Gulf of Mexico, and on your return from the Eastern Indies, they will salute you from the Eastern coast of the Pacific ocean. In the mean time, with genius developed by the influence

of freedom, and with vigor called forth and disciplined in the subjugation of the forest, and trained and perfected in the mysteries of ship-building and navigation, by the hardy exercise of the whale fisheries under either pole, they will, in all European conflicts, with keen sagacity, assume the relation of neutrals, and thus grasp the prize of Atlantic commerce dropped into their hands by fierce belligerents. In the midst of your studies and experiments in hydraulics, steam and electricity, they will seize the unpracticed and even incomplete inventions, and cover their rivers with steamboats, and connect and bind together their widely separated territories with canals, railroads, and telegraphs. When a long interval of peace shall have come, your merchants, combining a vast capital, will regain and hold for a time the carrying trade, by substituting capacious, buoyant, and fleet packet-ships, departing and arriving with exact punctuality; but the Americans, quickly borrowing the device, and improving on your skill, will reconquer their commerce. You will then rouse all the enterprise of your merchants, and all the spirit of your Government, and wresting the new and mighty power of steam from the hands of your inveterate rival, will apply it to ocean navigation, and laying hold of the commercial and social correspondence between the two continents, increasing as the nations rise to higher civilization and come into more close and intimate relations, as the basis of postal revenue, you will thus restore your lost monopoly on the Atlantic, and enjoy it unmolested through a period of ten years. During that season of triumph, you will mature and perfect all the arrangements for extending this mighty device of power and revenue, so as to connect every island of the seas and every part of every continent with your capital. But just at that moment, your emulous rival will appear with steamships still more capacious, buoyant, and fleet, than your own, in your harbors, and at once subverting your Atlantic monopoly, will give earnest of her vigorous renewal of the endless contest for supremacy of all the seas. When you think her expelled from the ocean, her flag will be seen in your ports, covering her charities contributed to relieve your population, stricken by famine; and while you stand hesitating whether to declare between republicanism and absolute power in continental Europe, her ambassadors will be seen waiting on every battle-field to salute the triumphs of liberty; and when that cause shall be overthrown, the same constant flag shall be seen even in

the Straits of the Dardanelles, receiving with ovations due to conquerors the temporarily overthrown champions of freedom. Look toward Africa! there you see American colonies lifting her up from her long night of barbarism into the broad light of liberty and civilization. Look to the East, you see American missionaries bringing the people of the Sandwich Islands into the family of nations, and American armaments peacefully seeking yet firmly demanding the rights of humanity in Japan. Look to the Equator, there are American engineers opening passages by canals and railroads across the isthmus which divides the two oceans. And last of all, look Northward, and you behold American sailors penetrating the continent of ice in search of your own daring and lost navigators."

Sir, this stupendous vision has become real. All this momentous prophecy has come to pass. The man yet lives who has seen both the end and the beginning of its fulfilment. It is history. And that history shows that this enterprise of American Atlantic steam navigation was wisely and even necessarily undertaken, to maintain our present commercial independence, and the contest for the ultimate empire of the ocean. Only a word shall express the importance of these objects. International postal communication and foreign commerce are as important as domestic mails and traffic. Equality with other nations in respect to those interests is as important as freedom from restriction upon them among ourselves. Except Rome—which substituted conquest and spoliation for commerce,—no nation was ever highly prosperous, really great, or even truly independent, whose foreign communications and traffic were conducted by other states; while Tyre, and Egypt, and Venice, and the Netherlands, and Great Britain, successively becoming the merchants, became thereby the masters of the world.

But the learned and honorable Chairman of the Committee on Finance raises a question on a warlike feature of the enterprise, which has not yet come under our notice. Departing, after the most profound consideration, from the ancient naval policy which separated the National Ocean Police from the National Mercantile Marine, Great Britain constructs all the steamships employed in her postal service; so that they are "good, substantial, and efficient —of such model and strength as to be fit and able to carry guns of the largest caliber used on board of her Majesty's steam-vessels

of war," and they are subject to be taken in emergencies by the government, at cost, for the public naval service. And in this way, Great Britain is rapidly and steadily building up a new and peculiar naval force, which will always be in complete condition and ready for effective use. The same principle was adopted in the contract with Collins and his associates; and the evidence is complete that it has been faithfully and fully carried out. The honorable Senator now disputes the soundness of the principle itself, and insists that merchant steam-vessels cannot be constructed so as to be practically useful for warlike purposes. I reply, first, that having, on such careful examination and with such weighty example, adopted the principle, we could not now wisely abandon it, without proof, by practical trial, long I hope to be delayed, that it is erroneous. Secondly: no ship of war, however constructed, is adapted to all the exigencies of naval service, while these steamships are certainly adapted to some of them. Commodore Perry, on the 15th of February, 1852, reports to the Secretary of the Navy that "these steamships (of the Collins line) may be converted, at an expense of $20,000 each, into war-steamers of the first class; and that each of them could carry four 10-inch Paixhan guns on pivots, fore and aft, of the weight of those in the model ship Mississippi, and ten 8-inch Paixhan guns on the sides, and that this armament would not incommode the vessel; and that, in the general operations of a maritime war, they would render good service; and especially that, from their great speed, they would be useful as dispatch vessels, and for the transportation of troops, being always capable of attack and defence, and overhauling and escaping from an enemy."

The Secretary of War reports to the Senate, on the 20th of March, 1852, that "the readiness of the steamers to be used at the shortest notice, their capacity of being used as transports for goods and munitions of war, and their great celerity of motion, enabling them to overhaul merchantmen, and at the same time escape cruisers, would render them terrible as guerrillas of the ocean."

Thirdly. Great Britain has already more than two hundred and fifty steamers, armed and capable of armament. What would be our situation, in the emergency of a war, if we were unprovided with a similar force for defence and aggression?

But, *fourthly.* The warlike adaptation of the steamers is a collateral and contingent feature of the enterprise, which will stand

safely on the accomplishment of its postal and mercantile ends, even if that feature should prove useless. These steamers, at least, are built and in use, and accomplish their important civic purposes. We may correct our system, not in this, but in future operations.

Thus, Mr. President, it appears that the enterprise was wisely adopted. And now, I pray you, take notice that *it has not been rendered unwise or impracticable by any change of circumstances or of public interests.* Every thing in these respects remains as it was, except that we have increased ability and increased need to put it forth in the struggle for the freedom of commerce and the command of the seas.

Nor does the expense complained of affect the question of perseverance. The excess of expense above the estimates, results from the wise policy of building larger and better ships than were at first contemplated, whereby in achievement we have not merely equalled but surpassed Great Britain.

Nor is the expense of the American steamers disproportionate to that of the British. Although we all know that for a time it might well be so, because the rate of interest, and the cost of labor and of skill, are higher on this side of the Atlantic than on the other, and because higher insurance must be paid on more valuable vessels. Nevertheless, the Cunard steamers, seven in number, have an aggregate capacity of 12,252 tons, averaging 1,750 tons for each, and they cross the Atlantic eighty-five times annually; thus the whole tonnage worked by them across the Atlantic is 148,750 tons.

The Collins steamers have an aggregate tonnage of 13,700, averaging 3,425 tons for each; and the aggregate tonnage worked by them across the ocean is 178,100 tons; the cost to the government is $850,000, not exceeding, in proportion to their work, the expense of the Cunard line. At the same time, they excel the Cunard steamers in speed. The shortest westward passage of the Cunard steamers was ten days and twenty-two hours, and the shortest eastward passage ten days and twelve hours; while the quickest westward passage of the Collins steamers was nine days and twelve hours, and the quickest eastward passage was nine days and eight hours.

Nor is the expense disproportioned to the benefits received. The first effect of the enterprise was a postal treaty with Great

Britain; and under that treaty, in lieu of receiving no steam ocean postages, as before, we now receive postages amounting in round numbers to $400,000; and this revenue must swell, and is actually swelling at the rate of $200,000 annually. Thus, in the first place, it is clear that in two years the postal revenue alone will defray the expense; and, secondly, there lies very near to us in the future, what my friend from Massachusetts [Mr. SUMNER] so justly denominates, and what every patriot and philanthropist so earnestly seeks, the great boon of cheap ocean postage.

And now, while we maintain postal communication to every part of our country, at no matter how great expense, provided that the revenue of the whole system shall equal the cost of all its parts, I desire to know why we should depart from a principle so enlightened in foreign postal conventions, which are ancillary to commerce, to immigration, and to political influence and power. But if we change the terms of the question, it will be more easily solved. What, then, shall we lose by arresting the enterprise? We shall lose all the postages on steam mails, and all the hopes of cheap postage, and all the profits on passengers and freight transported by steam. It is not easy to estimate these losses; but we have some knowledge of the profits of Great Britain, arising from the monopoly she enjoyed before our competition. The duties received into the treasury from the Cunard steamers rose in six years from $73,809 to $1,054,731. She paid the steamers for carrying the mails six years $2,550,000, and received postages in return amounting at $7,836,800; giving her a clear profit, on the postal revenue, of $5,286,800, or a little less than a million a year. We have gained at least one-half of what benefits Great Britain has lost by reason of our enterprise. Let that monopoly be restored and re-established, we shall then lose all that gain, and with it we shall see the postages, and freights, and rates of passage, raised to their ancient standards, and continually adjusted equally to injure our prosperity and promote the interests and gratify the caprice of Great Britain. What shall we then look for but decline of trade and industry, with a long train of commercial embarrassments and national humiliations?

At most, we can save by abandoning this enterprise only about $300,000 in two years. Could we not more easily retrench to that extent in some other quarter? We can save as much, and more, by laying up one of our frigates in ordinary during the same time,

and twice as much by burning it down to the water's edge. No one would advise this, and yet it would be far less disastrous than the retrenchment now proposed.

Still, sir, the argument that the expense exceeds the estimates is pressed. Well, there is nothing new in that. This is a deficiency bill. It makes appropriations of some millions to supply deficiencies in the customs service, in the construction of public edifices, in the improvement and embellishment of the capital, in the department of Indian Affairs, in the department of the Territories, and in the department of Foreign Relations. And just such a deficiency bill comes up from the House of Representatives, at the middle of every session of Congress, as punctually as the estimates for the year come in at the beginning, and as the appropriation bill, based on these estimates, appears at the close. Shall we, then, abandon the customs, the public edifices, the seat of government, the army and navy, the Indian tribes, the territories, and all foreign intercourse, because we can never estimate accurately, at the beginning, the cost of maintaining them throughout the fiscal year?

But it is said that the enterprise is a departure from the principle of free trade. Sir, it is a departure from that principle, but not a divergence from the fixed and ancient policy of the country. Widely, and I think unwisely, as we have differed among ourselves about the policy of protecting agriculture and manufactures, to the hindrance of the growth of commerce itself, yet we have, from first to last, uncompromisingly and unwaveringly adhered to the policy of protecting navigation. We inherited it from England, whose navigation act, passed by the Long Parliament, and co-operating with her encouragement of manufactures, broke the monopoly of Holland, and secured to the British Islands the commerce of the world and the command of the ocean. If this measure enhances protection of our navigation, it is because British largesses enhance the protection of her navigation. Let her revert to her old measure of protection, and we can at once safely return to ours.

The honorable Senator from Virginia tells us that it is wise to give up now, because, the system being unprofitable, we shall be obliged to give up at last. But this is only a temporary contest, not yet fully decided, and growing in success. Collins's contract has eight years to run. Long before that time, Atlantic

steam navigation will prove itself to be either self-sustaining or not self-sustaining. In either case, Great Britain will withdraw her patronage from her line, and we can then safely discontinue our contributions to our line.

The honorable Senator from Virginia seeks to divide us on this question, by presenting the claims of what he calls the poorer cities for a share in the benefits of this policy, now concentrated upon New York. I learn that a bill is near its third reading in the Legislature of the Old Dominion, having for its object to establish a line of first-class steamships between Norfolk and Antwerp. Sir, I assure the honorable senator that when a proposition shall come before us for material aid to the trade of any of our Atlantic cities, which shall at the same time be beneficent to the whole Union—whether that city be Boston, or Philadelphia, or Baltimore, or Norfolk, or Charleston, or New Orleans—I shall greet it with no reluctant hearing. But in the mean time the field of battle is chosen, not by us, but by the enemy; it is not a provincial contest for provincial objects, but it is a national one. We must meet our adversary on that field, not elsewhere; and we must meet her, or surrender the whole nation's cause without a blow.

And now I pray honorable senators to consider what it is that we are invited to surrender. It is no less than the proud commercial and political position we have gained by two wars with Great Britain, and by the vigorous and well-directed enterprise of our countrymen through a period now reaching to three-quarters of a century.

Next, I pray you to consider what position we must take after that surrender—the position of Mexico, of the Canadas, and of the South American states. Surely there is nothing attractive in such a change, in such a descent.

I conjure you to consider, moreover, that England, without waiting for, and, I am sure, without expecting, so inglorious a retreat on our part, is completing a vast web of ocean steam navigation, based on postage and commerce, that will connect all the European ports, all our own ports, all the South American ports, all the ports in the West Indies, all the ports of Asia and Oceanica, with her great commercial capital. Thus the world is to become a great commercial system, ramified by a thousand nerves projecting from the one head at London. Yet, stupendous as the scheme is, our own merchants, conscious of equal capacity and

equal resources, and relying on experience for success, stand here beseeching us to allow them to counteract its fulfilment, and ask of us facilities and aid equal to those yielded by the British Government to its citizens. While our commercial history is full of presages of a successful competition, Great Britain is sunk deep in debt. We are free from debt. Great Britain is oppressed with armies and costly aristocratic institutions; industry among us is unfettered and free. But it is a contest depending not on armies, nor even on wealth, but chiefly on invention and industry. And how stands the national account in those respects? The cotton-gin, the planing-machine, steam navigation, and electrical communication—these are old achievements. England only a year ago invited the nations to bring their inventions and compare them together in a palace of iron and glass. In all the devices for the increase of luxury and indulgence, America was surpassed, not only by refined England and by chivalrous France, but even by semi-barbarian Russia. Not until after all the mortification which such a result necessarily produced, did the comparison of utilitarian inventions begin. Then our countrymen exhibited Dick's Anti-friction Press—a machine that moved a power greater by 240 tons than could be raised by the Brama Hydraulic Press, which, having been used by Sir John Stevenson in erecting the tubular bridge over the Straits of Menai, had been brought forward by the British artisans as a contrivance of unrivalled merit for the generation of direct power. Next was submitted, on our behalf, the two inventions of St. John, the Variation Compass, which indicates the deflection of its own needle at any place, resulting from local causes; and the Velocimeter, which tells, at any time, the actual speed of the vessel bearing it, and its distance from the port of departure—inventions adopted at once by the Admiralty of Great Britain. Then, to say nothing of the ingeniously-constructed locks exhibited by Hobbs, which defied the skill of the British artisans, while he opened all of theirs at pleasure, there was Bigelow's Power-loom, which has brought down ingrain and Brussels carpets within the reach of the British mechanic and farmer. While the American Plows took precedence of all others, McCormick's Reaper was acknowledged to be a contribution to the agriculture of England, surpassing in value the cost of the Crystal Palace. Nor were we dishonored in the Fine Arts, for a well-deserved meed was awarded to Hughes for his successful in-

corporation in marble of the ideal of Oliver Twist; and the palm was conferred on Powers for his immortal statue of the Greek Slave. When these successes had turned away the tide of derision from our country, the yacht America entered the Thames. Skillful architects saw that she combined, in before unknown proportions, the elements of grace and motion, and her modest challenge was reluctantly accepted, and even then only for a tenth part of the prize she proposed. The trial was graced by the presence of the Queen and her Court, and watched with an interest created by national pride and ambition, and yet the triumph was complete.

In the very hour of this, of itself, conclusive demonstration of American superiority in utilitarian inventions, and in the art "that leads to nautical dominion," a further and irresistible confirmation was given by the arrival of American clippers from India, freighted at advanced rates with shipments, consigned by the agents of the East India Company at Calcutta to their own warehouses in London. Such and so recent are the proofs, that in the capital element of invention we are equal to the contest for the supremacy of the seas. When I consider them, and consider our resources, of which those of Pennsylvania, or of the valley of the Mississippi, or of California, alone exceed the entire native wealth of Great Britain; when I consider, moreover, our yet unelicited manufacturing capacity—our great population, already nearly equal to that of the British Islands, and multiplying at a rate unknown in human progress by accessions from both of the old continents; when I consider the advantages of our geographical position, midway between them; and when I consider, above all, the expanding and elevating influence of freedom upon the genius of our people, I feel quite assured that their enterprise will be adequate to the glorious conflict, if it shall be only sustained by constancy and perseverance on the part of their government. I do not know that we shall prevail in that conflict; but for myself, like the modest hero who was instructed to charge on the artillery at Niagara, I can say that we "will try;" and that when a difficulty occurs no greater than that which meets us now, my motto shall be the words of the dying commander of the Chesapeake—"Don't give up the ship."

SURVEY OF THE ARCTIC AND PACIFIC OCEANS.

JULY 29, 1852.

Mr. PRESIDENT: Some years ago, when ascending the Alabama, I saw a stag plunge into the river, and gallantly gain the western bank, while the desponding sportsman whose rifle he had escaped, sat down to mourn his ill luck under the deep magnolia forest that shaded the eastern shore. You, sir, are a dweller in that region, and are, as all the world knows, a gentleman of cultivated taste and liberal fortunes. Perhaps, then, you may have been that unfortunate hunter. Howsoever that may have been, I wish to converse with you now of the chase, and yet not of deer, or hawk, or hound, but of a chase upon the seas; and still not of angling or trolling, nor of the busy toil of those worthy fishermen who seem likely to embroil us, certainly without reluctance on our part, in a controversy about their rights in the Bay of Fundy; but of a nobler sport, and more adventurous sportsmen than Izaak Walton, or Daniel Boone, or even Nimrod, the mightiest as well as most ancient of hunters, ever dreamed of—the chase of the whale over his broad range of the universal ocean.

Do not hastily pronounce the subject out of order or unprofitable, or unworthy of this high presence. The Phœnicians, the earliest mercantile nation known to us, enriched themselves by selling the celebrated Tyrian dye, and glass made of sand taken from the sea; and they acquired not only those sources of wealth, but the art of navigation itself, in the practice of their humble calling as fishermen. A thousand years ago, King Alfred was laying the foundations of empire for Young England, as we are now doing for Young America. The monarch whom men have justly surnamed the Wise as well as the Great, did not disdain to

listen to Octher, who related the adventures of a voyage along the coast of Norway, "so far north as commonly the whale hunters used to travel;" nor was the stranger suffered to depart until he had submitted to the king "a most just survey and description" of the Northern Seas, not only as they extended upward to the North Cape, but also as they declined downward along the southeast coast of Lapland, and so following the icy beach of Russia to where the river Dwina discharged its waters into the White Sea, or, as it was then called, the Sea of Archangel. Perhaps my poor speech may end in some similar lesson. The incident I have related is the burden of the earliest historical notice of the subjugation of the monster of the seas to the uses of man. The fishery was carried on then, and near six hundred years afterward, by the Basques, Biscayans, and Norwegians, for the food yielded by the tongue, and the oil obtained from the fat of the animal. Whalebone entered into commerce in the fifteenth century, and at first commanded the enormous price of seven hundred pounds sterling per ton, exceeding a value in this age of ten thousand dollars. Those were merry times, if not for science, at least for royalty, when, although the material for stays and hoops was taken from the mouth, the law appropriated the tail of every whale taken by an English subject to the use of the queen, for the supply of the royal wardrobe.

In 1486, the Portuguese reached the Cape of Storms, and, in happy augury of an ultimate passage to India, changed its ill-omened name to that of "Good Hope;" and immediately thereafter the northern states of Europe, especially England and Holland, began that series of voyages, not even yet ended, in search of a passage to the East through the floating fields and mountains of ice in the Arctic Ocean. The unsuccessful search disclosed the refuge of the whales in the bays and creeks of Spitzbergen. In 1575, a London merchant wrote to a foreign correspondent for advice and direction as to the course of killing the whale, and received instructions how to build and equip a vessel of two hundred tons, and to man it exclusively with experienced whale hunters of Biscay. The attraction of dominion was stronger in that age than the lust of profit. The English now claimed Spitzbergen, and all its surrounding ice and waters, by discovery. The Dutch, with truth, alleged an earlier exploration, while the Danes claimed the whole region as a part of Greenland—a pretension

that could not then be disproved; and all these parties sent armed forces upon the fishing ground, less to protect their few fishermen, than to establish exclusive rights there. After some fifty years, these nations discovered, first, that it was absurd to claim jurisdiction where no permanent possession could ever be established, by reason of the rigors of climate; and secondly, that there were fish enough and room enough for all competitors. Thenceforward, the whale fishery in the Arctic Ocean has been free to all nations.

The Dutch perfected the harpoon, the reel, the line, and the spear, as well as the art of using them. And they established, also, the system which we have since found indispensable, of rewarding all the officers and crews employed in the fishery, not with direct wages or salaries, but with shares in the spoils of the game, proportioned to skill and experience. Combining with these the advantages of favorable position, and of frugality and perseverance quite proverbial, the Dutch even founded a fishing settlement called Smeerenburgh, on the coast of Spitzbergen, within eleven degrees of the North Pole, and they took whales in its vicinity in such abundance that ships were needed to go out in ballast to carry home the surplus oil and bone above the capacity of the whaling vessels. The whales, thus vigorously attacked, again changed their lurking place. Spitzbergen was abandoned by the fishermen, and the very site of Smeerenburgh is now unknown. In the year 1496, Sebastian Cabot, in the spirit of that age, seeking a north-western passage to the Indies, gave to the world the discovery of Prima Vista, or, as we call it, Newfoundland, and the Basques, Biscayans, Dutch and English, immediately thereafter commenced the chase for whales in the waters surrounding it.

Scarcely had the colonists of Massachusetts planted themselves at Plymouth, before the sterility of the soil and the rigor of the climate forced them to resort to the sea to eke out their subsistence. Pursuing the whales out from their own bays, in vessels of only forty tons burden, they appeared on the fishing ground off Newfoundland in the year 1690. Profiting by nearness of position and economy in building and equipping ships, and sharing also in the bounties with which England was then stimulating the whale fishery, they soon excelled all their rivals on the Newfoundland waters, as well as in Baffin's Bay and off the coast of Green-

land. Thus encouraged, they ran down the coasts of America and Africa, and in the waters rolling between them they discovered the black whale, a new and inferior species, yet worthy of capture; and then stretching off toward the South Pole, they found still another species, the sperm whale, whose oil is still preferred above all other; and thus they enlarged the whale fishery for the benefit of the world, which since that time has distinguished the two branches of that enterprise geographically by the designation of the Northern and Southern fisheries. In 1775, the fisheries were carried on by the Americans, the English, the Dutch, and the French. The French employed only a small fleet, the Dutch a larger one of 129 sail. The English had only 96 ships, while the Americans had 132 vessels in the Southern fishery, and 177 in the Northern fishery, manned with 4,000 persons, and bringing in oil and whalebone of the value of $1,111,000. This precociousness of American nautical enterprise elicited from Burke, in his great speech for conciliation to the colonies, a tribute familiar to our countrymen, and perhaps the most glowing passage that even that great orator ever wrote or spoke: "Look at the manner in which the people of New England have of late carried on the whale fishery. While we follow them among the tumbling mountains of ice, and behold them penetrating into the deepest recesses of Hudson's Bay and Davis's Straits, while we are looking for them beneath the Arctic circle, we hear that they have pierced into the opposite region of Polar cold—that they are at the Antipodes, and engaged under the frozen serpent of the South. Falkland Island, which seemed too remote and romantic an object for the grasp of national ambition, is but a stage and resting-place in the progress of their victorious industry. Nor is the equatorial heat more discouraging to them than the accumulated winter of both the poles. We know that while some of them draw the line and strike the harpoon on the coast of Africa, others run the longitude, and pursue their gigantic game along the coast of Brazil. No ocean but what is vexed with their fisheries, no climate that is not witness to their toils. Neither the perseverance of Holland, nor the activity of France, nor the dexterous and firm sagacity of English enterprise, ever carried this perilous mode of hardy enterprise to the extent to which it has been pushed by this recent people—a people who

are still, as it were, in the gristle, and not yet hardened into the bone of manhood."

But Britain did not conciliate. The Revolution went on, and the American whale fishery perished, leaving not one vessel on either fishing ground.

Yet it is curious, Mr. President, to mark the elasticity of our countrymen in this their favorite enterprise. A provisional treaty of peace between the United States and Great Britain was concluded on the 30th of November, 1782. "On the 3d of February, 1783," (I read from an English paper of that period,) "the ship Bedford, Captain Moores, belonging to Massachusetts, arrived in the Downs. She passed Gravesend on the 4th, and on the 6th was reported at the custom-house in London. She was not allowed regular entry until after some consultation between the commissioners of customs and the Lords of the Council, on account of the many acts of Parliament yet in force against the rebels of America. She was loaded with 587 barrels of whale oil, and manned wholly with American seamen, and belonged to the island of Nantucket. The vessel lay at the Horsley-Downs, a little below the Tower, and was the first which displayed the thirteen stripes of America in any British port."

Nevertheless, the lost vantage ground was not easily nor speedily regained. The effort was made without protection, against exclusion in foreign markets, and against bounties by the English government, equivalent to forty dollars per man employed, or sixty per cent. on the value of every cargo obtained—bounties not occasionally nor irregularly offered, but continued from 1750 to 1824, and amounting in the aggregate to three millions of pounds sterling. Nor was this all. These bounties, enhanced with additional inducements, were offered to the Nantucket fishermen, on condition of their abandoning their country and becoming inhabitants of the adjacent British colonies, or of the British islands. It seemed, indeed, that a crisis in this great national interest had come. Happily there was, on the French side of the Channel, at least, one unwearied friend of America, as there were many watchful enemies of England. Lafayette wrote several letters to Boston, and arrested an immigration from Nantucket to the British colonies and islands already on the eve of embarkation, and then addressed himself to the French monarch and his court. France saw at once the dangers of a transfer of so great a number of sea-

men, together with the very secret, art and mystery of whale hunting, to her hereditary and relentless enemy. The good but ill-fated Louis XVI. equipped six whaling vessels, with American harpooners, on his own account, and offered a bounty of nine dollars per man, payable by the royal treasury, to every American fisherman who should emigrate to France. In a whole year, only nine families, containing thirty-three persons, accepted this offer; and therefore the king, in compliance with Lafayette's first advice, adopted the expedient of discriminating in favor of American cargoes of oil and whalebone in the French market. The American whale fishery began to revive, and in 1787, 1788, and 1789, it employed an average of 122 vessels. But it still labored under the pressure of competition, stimulated by bounties both in England and in France. In 1790, the Great and General Council of Massachusetts appealed to Congress for protection to this great interest of that commonwealth. Mr. Jefferson, the Secretary of State, submitted an elaborate reply, which, while it was liberal in its spirit, nevertheless closed with the declaration, that "the whale fishery was a branch of industry so poor as to come to nothing with distant nations who did not support it from their treasuries—that our position placed our fishing on ground somewhat higher, such as to relieve the national treasury from giving it support, but not to permit it to derive support from the fishery, nor to relieve the Government from the obligation to provide free markets for the productions of the fishery, if possible."

The enterprise had not yet languished into life, when the French revolution of 1789 occurred, which involved Europe, and ultimately the United States, in wars that swept the latter, as well as the French and Dutch, from all the fisheries, and left them in the exclusive enjoyment of Britain, who achieved in those wars her now established pre-eminence as the conqueror of the seas. At their close, the British had 146 vessels in the Northern whaling ground, which captured no less than 733 whales, and thus obtained 13,590 tons of oil and 438 tons of whalebone; and fifty-six ships in the Southern whale fishery equally successful. The Americans now re-entered the game, and the tables were speedily—and, as we think, permanently—turned in their favor. In 1824, the British became discouraged, and withdrew their bounties; and in 1842, they had no more than 18 vessels in the North fishery, which captured only 24 whales. The Southern fishery declined still more

rapidly; so that, in 1845, not one British whaler appeared in the South seas. Since that time, all nations have virtually abandoned this "hardy form of perilous enterprise" in favor of the Americans. The entire whaling fleet of the world, in 1847, consisted of about 900 vessels, 40 of which belonged to France, 20 to Bremen and other ports in Northern Europe, 20 to New Holland and other British Polynesian colonies, and all others, more than 800 in number, with a tonnage of 240,000 tons, belonged to the United States. The capital thus employed exceeded twenty millions of dollars, and the annual productions of the fisheries amounted to thirteen millions of dollars. With the decline of this enterprise in Great Britain, her commercial writers began to discountenance whale fishing altogether; and while they now represent it as a mere gambling adventure, they endeavor to stimulate the people of continental Europe to substitute vegetable oils for those procured in the seas.

Mr. President, pray, consider the cost, time, dangers, and hazard of the whale fishery. Each vessel with its outfit is worth $30,000, and carries thirty able-bodied seamen, and is afloat on a single voyage one or two, perhaps three years. It finds the whale nowhere below the sixtieth degree of latitude, and can remain there only during the brief Polar summer of three months. The whole time may elapse without a whale being seen. When discovered, every stage of his capture is toilsome, and attended with multiplied dangers to the assailants, increased by the shoals, the ice, the storms, and the fogs, which protect the animal against his pursuers. The statistics are absolutely frightful to a landsman or a common seaman. In 1819, of sixty-three British ships sent to Davis's Straits, ten were lost. In 1821, out of sixty-nine, eleven were lost. Of eighty-seven ships that sailed for Davis's Straits in 1830, no less than eighteen were lost, twenty-four returned *clean*, while not one of the remainder had a full cargo, and only one or two *half fished*.

Pray, consider now, sir, that the great triumph of the American fishermen was achieved, and is still sustained, not only without aid from the Government, but practically also without aid from the capital or enterprise of general commerce, and, indeed, to quote the nervous language of Jefferson, "with no auxiliaries but poverty and rigorous economy." The whaling fleet of the United States, in 1846, consisted of seven hundred and thirty-seven vessels. Of

the thirty states, only five, New Hampshire, Rhode Island, Connecticut, Massachusetts and New York, were represented; and all of them, except New York, are the states least blessed in fertility and climate. New Hampshire, having only a single port, sent out only one vessel. Rhode Island, one of the three most diminutive states, equipped fifty-two. Connecticut, a small state, sent out one hundred and twenty-four. New York, with her extended territory, vast wealth, and stupendous commercial establishments, sent only eighty-five; and all the rest proceeded from that state, inferior to many others in extent, wealth, and commerce, but superior to them all in intellectual and social development—Massachusetts.

Wealth does nothing, patronage does nothing, while vigor does everything for the whale fishery. In Great Britain, London resigned it in favor of those poor and obsolete towns, Hull in England, and Peterhead in Scotland, as soon as the government bounties ceased. So, of the eighty-five vessels which in 1846 represented New York in the fishery, only one went up from the port of New York, the commercial capital of the state and of the continent, while no less than eight proceeded from Cold Spring, a mere ocean cove. All the others were sent forth from New Suffolk, Greenport, and Sag Harbor, inconsiderable villages or hamlets on the outward coast of Long Island. Massachusetts exhibits the same case. Boston finds more lucrative employment for her capital in spindles, in railroads, and even in her fields of ice and quarries of granite; and so leaves the profits and toils of the whale fishery to Freetown, Falmouth, Sippican, Wareham, Plymouth, Holmes' Hole, Fall River, Provincetown, Fairhaven, New Bedford, and Nantucket, towns which but for their pursuit of the whale fishery would scarcely have been honored with designation on the chart or names in the gazetteer.* Most wondrous of all, Nantucket is a sandy island, fifteen miles long and three miles broad, capable of maintaining by agriculture only one hundred persons, and yet it was the cradle of the whale fishery; and neither any town in America, nor in England, nor even in France, has ever successfully established or at all maintained the whale fishery without drawing, not merely its knowledge of whale-hunting, but the officers and crews of its vessels, chiefly from that sandy shoal thus rising above the surface of the sea.

* See Note at the end of the speech.

Need I dwell here on the whale fishery as a source of national wealth, and an element of national force and strength? The number of those who are actively afloat in the pursuit ranges from 15,000 to 20,000, while twenty times that greatest number of persons are indirectly engaged in the culture of hemp and the manufacture of cordage, the building of ships, furnishing their supplies, manufacturing and preparing the oil and whalebone, in sending them to market, and in the various other occupations incidentally connected with the trade. The wealth thus acquired leaves all the resources of the country untouched. Dr. Franklin cheered the fishermen of his day with the apothegm that whosoever took a fish out of the sea always found a piece of silver in his mouth, and our experience has confirmed its truth, although it is now rejected by the commercial writers of England.

We are the second in rank among commercial nations. Our superiority over so many, results from our greater skill in shipbuilding, and our greater dexterity in navigation, and our greater frugality at sea. These elements were developed in the fisheries, and especially in the Northern fishery. We think that we are inferior to no nation in naval warfare. The seamen who have won our brilliant victories on the ocean and on the lakes were trained and disciplined in this the severest of all marine service; and our naval historians agree that it constituted the elementary school of all our nautical science. What, then, would compensate us for the loss or for the decline of the whale fishery!

Mr. President, I have tried to win the favor of the Senate toward the national whale fishery for a purpose. The whales have found a new retreat in the seas of Ochotsk and Anadir, south of Bhering Straits, and in that part of the Arctic Ocean lying north of them. In 1848, Captain Roys, in the whale ship Superior, passed through those seas and through the straits, braving the perils of an unknown way and an inhospitable climate. He filled his ship in a few weeks, and the news of his success went abroad. In 1849, a fleet of 154 sail went up to this new fishing ground; in 1850, a fleet of 144; and in 1851, a fleet of 145. The vessels are manned with thirty persons each; and their value, including that of the average annual cargoes procured there, is equal to nine millions—and thus exceeds by near two millions the highest annual import from China. But these fleets are beset by not only such dangers of their calling as customarily

occur on well-explored fishing grounds, but also by the multiplied dangers of shipwreck resulting from the want of accurate topographical knowledge—the only charts of those seas being imperfect and unsatisfactory. While many and deplorable losses were sustained by the fleets of 1849–'50, we have already information of the loss of eleven vessels, one-thirteenth part of the whole fleet of 1851, many of which disasters might have been avoided had there been charts accurately indicating the shoals and headlands, and also places of sheltered anchorage near them. These facts are represented to us by the merchants, ship-owners, and underwriters, and are confirmed by Lieutenant Maury, who presides in this department of science in the navy, as well as in the labors and studies of the National Observatory. We want, then, not bounties nor protection, nor even an accurate survey, but simply an exploration and reconnoissance of those seas, which have so recently become the theatre of profitable adventure and brave achievement by our whale hunters. This service can be performed by officers and crews now belonging to the navy, in two or three vessels which already belong or may be added to it, and would continue at most only throughout two or three years. Happily, the measure involves nothing new, untried, or uncommon. To say nothing of our recent search for the lamented Sir John Franklin, nor of our great exploring expedition under Captain Wilkes, we are already engaged in triangulating a coast survey of the Atlantic shore. Charts, light-houses, and beacons, show the pilot his way, not only over that ocean and among its islands, but along all our rivers, and even upon our inland lakes. The absence of similar guides and beacons in the waters now in question, results from the fact, that the Pacific coast has but recently fallen under our sway, and Behring's Straits and the seas they connect have not until now been frequently navigated by the seamen of any nation. Certainly somebody must do this service. But who will? The whalers cannot. No foreign nation will, for none is interested. The constitutional power and responsibility rest with the Federal Government, and its means are adequate.

California is near this fishing ground. Her enterprising citizens are already engaged in this pursuit, and henceforward the whale hunters of Nantucket must compete with new rivals, possessing the advantage of nearness to the scenes of their labors.

California, therefore, joins Massachusetts in this reasonable demand.

Mr. President, the small exploring fleet thus proposed would be obliged to quit the northern seas early in September, and could not return to them until the succeeding June. I propose that it shall spend that long season in performing a service not dissimilar under milder skies, in that part of the Pacific Ocean and its adjoining seas, which is usually traversed by vessels sailing from New York and San Francisco to China and the Indies. Remember, sir, if you please, that not only has no Asiatic prince, merchant, or navigator, ever explored this one of all the oceans, the broadest and most crowded and crowned with islands, but that they have forbidden that exploration by European navigators, who have performed whatever has been done at the peril, and often at the cost, of imprisonment and death. We have made no accurate survey, for we have only just now arrived and taken our stand on the Pacific coast. We are new on that ocean—nay, we are only as of yesterday upon this continent; and yet maps and charts are as necessary to the seafaring man on that ocean as on any other; and just as necessary on every ocean as monuments and guides are to him who traverses deserts of unimpressible sand or wastes of trackless snow.

Lieutenant Maury informs us that every navigator of those waters is painfully impressed with a sense of surrounding dangers —they exist, and yet the only charts that have been made fail to indicate in what forms or in what places they will appear. So imperfect is our topographical information, that a large island, called Ousima, supposed to be thickly inhabited and highly cultivated, lies in the fair way to China, and yet no vessel has ever touched or gone around it. It would repay tenfold the cost of the whole exploration if we should find on that island a good harbor and a friendly people.* Horsbergh's charts of these passages are the best. But these are of old dates, and although they have been corrected from time to time, yet they are very imperfect. The shoals in the China Sea, the Sea of Japan, and the Straits of Gasper, are represented to us by navigators as being formed of coral, a mixture of animal and vegetable organization, and therefore increasing rapidly in magnitude as they approach

* Within the last year the Memnon, an American ship, valued with her cargo at $500,000, was lost in the Straits of Gasper.

near to the surface of the waters. It is particularly necessary to explore and note the shoals and islands lying between the coast of Palawan on the China Sea and that of Cochin China, and also the shoals in the vicinity of West London, Prince of Wales, and Paulo Sapata islands. The perils existing there oblige ships going up and coming down through those seas against the monsoons to beat at disadvantage, while an exploration would probably disclose eddies and currents which would allow of straight courses where now no one dares pursue them. Clement's Strait and the Caramata Passage are filled with the same dangers. Again, the great outlet from the China Sea into the Pacific Ocean by the Bahee, and adjacent passages between the islands of Luconia and the coasts of China and Formosa, need to be surveyed, although the islands are generally well designated on the maps. Then proceeding northwardly, a regard to the safety of the whaleman demands that the islands between the coasts of China and Japan, and from them to the Loo Choo islands, and so on to the Russian possessions, and along them eastwardly to Behring Straits, should be surveyed. The last attempt to perform that duty was made by a small Russian fleet, which was captured and destroyed, while its officers and crew were imprisoned by the Japanese. Lastly, as we advance eastwardly in the very track pursued by our whalers and Chinamen, we encounter islands, and many shoals imperfectly defined, and especially the Bonin islands; while prudence requires a careful reconnoissance also of the Fox islands, which, although lying somewhat northwardly of the passage, might, if well known, afford shelter in case of inclement weather. This reconnoissance in a temperate latitude is demanded by the merchants, underwriters, and navigators, in all our Atlantic as well as in our two principal Pacific ports, and the argument for it rests on the same foundation with that which supports the proposition for the more northwardly exploration. Your mails and passengers of a certain class will be carried between San Francisco and Shanghai in steamships. Nevertheless, without such a survey as this bill proposes, you cannot establish a coaling station on the way, although the voyage exceeds seven thousand miles. Will you leave this survey and its benefits to England?

Sir, have you looked recently at the China trade? It reaches already seven millions in value annually. Have you watched the California trade? Its export of bullion alone already exceeds

fifty millions of dollars annually, and as yet the mineral development of that state has only begun. The settlement of the Pacific coast is in a state of sheer infancy. There is, speaking relatively, neither capital nor labor there adequate to exhibit the forces of industry that might be employed in that wonderful region. Nor is California yet conveniently accessible. The railway across Panama is not yet completed. The passage through Nicaragua is not perfect; that which leads through Tehuantepec is not begun; nor have we yet extended, even so far as to the Mississippi, the most important and necessary one of them all, the railroad across our own country to San Francisco. The emigrant to the Atlantic coast arrives speedily and cheaply from whatever quarter of the world; while he who would seek the Pacific shore, encounters charges and delays which few can sustain. Nevertheless, the commercial, social, political movements of the world, are now in the direction of California. Separated as it is from us by foreign lands, or more impassable mountains, we are establishing there a custom-house, a mint, a dry dock, Indian agencies, and ordinary and extraordinary tribunals of justice. Without waiting for perfect or safe channels, a strong and steady stream of emigration flows thither from every state and every district eastward of the Rocky Mountains. Similar torrents of emigration are pouring into California and Australia from the South American states, from Europe, and from Asia. This movement is not a sudden, or accidental, or irregular, or convulsive one; but it is one for which men and nature have been preparing through near four hundred years. During all that time merchants and princes have been seeking how they could reach cheaply and expeditiously, "Cathay," "China," "the East," that intercourse and commerce might be established between its ancient nations and the newer ones of the west. To these objects Da Gama, Columbus, Americus, Cabot, Hudson, and other navigators, devoted their talents, their labors, and their lives. Even the discovery of this continent and its islands, and the organization of society and government upon them, grand and important as these events have been, were but conditional, preliminary, and ancillary to the more sublime result, now in the act of consummation—the reunion of the two civilizations, which, having parted on the plains of Asia four thousand years ago, and having travelled ever afterward in opposite directions around the world, now meet again on the

coasts and islands of the Pacific Ocean. Certainly, no mere human event of equal dignity and importance has ever occurred upon the earth. It will be followed by the equalization of the condition of society and the restoration of the unity of the human family. We see plainly enough why this event could not have come before, and why it has come now. A certain amount of human freedom, a certain amount of human intelligence, a certain extent of human control over the physical obstacles to such a reunion, were necessary. All the conditions have happened and concurred. Liberty has developed under improved forms of government, and science has subjected nature in Western Europe and in America. Navigation, improved by steam, enables men to outstrip the winds, and intelligence conveyed by electricity excels in velocity the light. With these favoring circumstances there has come also a sudden abundance of gold, that largely relieves labor from its long subjection to realized capital. Sir, this movement is no delusion. It will no more stop than the emigration from Europe to our own Atlantic shores has stopped, or can stop, while labor is worth there, twenty cents and here fifty cents a day. Emigration from China cannot stop while labor is worth in California five dollars a day, and in the West Indies ten dollars a month, and yet is worth in China only five dollars for that period. Accordingly, we have seen sixty-seven ships filled, in three months of the present year, with seventeen thousand emigrants in the ports of Hong Kong, Macao, and Whampoa, and afterward discharge them on the shores of California, and of Cuba, and other islands of the West Indies.

Sir, have you considered the basis of this movement, that this continent and Australia are capable of sustaining, and need for their development, five hundred millions, while their population is confined to fifty millions, and yet that Asia has two hundred millions of excess? As for those who doubt that this great movement will quicken activity and create wealth and power in California and Oregon, I leave them to consider what changes the movements, similar in nature but inferior in force and slower in effect, have produced already on the Atlantic coast of America. As to those who cannot see how this movement will improve the condition of Asia, I leave them to reflect upon the improvements in the condition of Europe since the discovery and colonization of America. Who does not see, then, that every year hereafter,

European commerce, European politics, European thoughts, and European activity, although actually gaining greater force—and European connections, although actually becoming more intimate —will, nevertheless, relatively sink in importance; while the Pacific Ocean, its shores, its islands, and the vast regions beyond, will become the chief theatre of events in the world's great hereafter? Who does not see that this movement must effect our own complete emancipation from what remains of European influence and prejudice, and in turn develop the American opinion and influence which shall remould constitutions, laws, and customs, in the land that is first greeted by the rising sun? Sir, although I am no socialist, no dreamer of a suddenly-coming millennium, I nevertheless cannot reject the hope that peace is now to have her sway, and that as war has hitherto defaced and saddened the Atlantic world, the better passions of mankind will soon have their development in the new theatre of human activity.

Commerce is the great agent of this movement. Whatever nation shall put that commerce into full employment, and shall conduct it steadily with adequate expansion, will become necessarily the greatest of existing states; greater than any that has ever existed. Sir, you will claim that responsibility and that high destiny for our own country. Are you so sure that by assuming the one she will gain the other? They imply nothing less than universal commerce and the supremacy of the seas. We are second to England, indeed, but, nevertheless, how far are we not behind her in commerce and in extent of empire! I pray to know where you will go that you will not meet the flag of England fixed, planted, rooted into the very earth? If you go northward, it waves over half of this Continent of North America, which we call our own. If you go southward, it greets you on the Bermudas, the Bahamas, and the Caribbee Islands. On the Falkland Islands it guards the Straits of Magellan; on the South Shetland Island it watches the passage round the Horn; and at Adelaide Island it warns you that you have reached the Antarctic Circle. When you ascend along the south-western coast of America, it is seen at Galopagos, overlooking the Isthmus of Panama; and having saluted it there, and at Vancouver, you only take leave of it in the far northwest, when you are entering the Arctic Ocean. If you visit Africa, you find the same victorious cross guarding the coast of Gambia and Sierra Leone and St. Helena. It watches you at Cape Town

as you pass into the Indian Ocean; while on the northern passage to that vast sea it demands your recognition from Gibraltar, as you enter the Mediterranean; from Malta, when you pass through the Sicilian Straits; on the Ionian Islands it waves in protection of Turkey; and at Aden it guards the passage from the Red Sea into the Indian Ocean. Wherever western commerce has gained an entrance to the Continent of Asia, there that flag is seen waving over subjugated millions—at Bombay, at Ceylon, at Singapore, at Calcutta, at Lahore, and at Hong Kong; while Australia and nearly all the islands of Polynesia acknowledge its protection.

Sir, I need not tell you that wherever that flag waves, it is supported and cheered by the martial airs of England. But I care not for that. The sword is not the most winning messenger that can be sent abroad; and commerce, like power, upheld by armies and navies, may in time be found to cost too much. But what is to be regarded with more concern is, that England employs the steam engine even more vigorously and more universally than her military force. Steam engines, punctually departing and arriving between every one of her various possessions and her island seat of power, bring in the raw material from every manufacture and supplies for every want. The steam engine plies incessantly there, day and night, converting these materials into fabrics of every variety, for the use of man. And again the steam engine forever and without rest moves over the face of the deep, not only distributing these fabrics to every part of the globe, but disseminating also the thoughts, the principles, the language and religion of England. Sir, we are bold indeed to dare competition with such a power. Nevertheless, the resources for it are adequate. We have coal and iron no less than she, while corn, timber, cattle, hemp, wool, cotton, silk, oil, sugar, and the grape, quicksilver, lead, copper, silver, and gold, are all found within our own broad domain in inexhaustible profusion. What energies we have already expended prove that we have in reserve all that are needful. What inventions we have made, prove our equality to any exigency. Our capital increases, while labor scarcely knows the burden of taxation. Our Panama route to China has a decided advantage over that of the Isthmus of Suez, and at the same time vessels leaving that country and coming round the Horn, will reach New York always at least five days sooner than vessels of equal speed

can double the Cape of Good Hope, and make the port of Liverpool.

Mr. President, we now see how conspicuous a part in the great movement of the age, California and Oregon are to sustain, and that, as yet, they are separated from us and isolated. They will adhere to us only so long as our government over them shall be conducted, not for our benefit, but for their own. Their loyalty is great, but it cannot exceed that of the thirteen ancient American colonies to Great Britain; and yet the neglect and oppression of their commerce undermined that loyalty, and resulted in their independence. I hear often of dangers to the Union, and see lines of threatened separation drawn by passionate men or alarmists, on parallels of latitude; but, in my judgment, there is only one danger of severance—and that is involved in the possibility of criminal neglect of the new communities on the Pacific coast, while the summits of the Rocky Mountains, and of the Snowy Mountains, mark the only possible line of dismemberment. Against that danger I would guard as against the worst calamity that could befall, not only my country, at her most auspicious stage of progress, but mankind also, in the hour of their brightest hopes. I would guard against it by practicing impartial justice toward the new and remote states and territories, whose political power is small, while their wants are great, and by pursuing at the same time, with liberality and constancy, the lofty course which they indicate, of an aspiring yet generous and humane national ambition.

NOTE.—Some very interesting facts connected with the history of the commencement and progress of the Whale Fisheries, are contained in the following letter, dated,—

"NEW BEDFORD, 14th August, 1852.

"DEAR SIR,—The commencement of the whale fishery at New Bedford is nearly, if not quite, I believe, coeval with its commencement at Nantucket, in *sailing vessels*. The first settlers of Nantucket took 'right whales' in open boats, at a very early period; at what period they first ventured farther, in sailing vessels, I have not the means at hand of knowing; but as early as 1764, small sloops of 40 to 60 tons, were fitted out at New Bedford, (then called Dartmouth), by Joseph Russell, the pioneer of the whale fishery from this port. These vessels ventured out only in the summer months, off the Capes of Virginia and Cape Hatteras, for sperm whales; taking care to return into port before the equinoctial gales set in. The blubber, as taken from the whales, was brought into port and tried out on shore: this practice was followed for many years. There are now living in New Bedford, two old gentlemen, one aged 91, the other in his 95th year, who perfectly well remember seeing, when they were boys, the blubber landed from the vessels, and witnessed its being tried out on shore.

"I have in my possession the account books of Joseph Russell, dated as far back as 1770, showing that there were, at that time, four of those small vessels employed in the whale fishery on the southern coast, belonging to him; and there were probably others. These account books were kept by double entry, in beautiful hand-writing, and would do credit to any modern book-keeper.

"The vessels were increased in size, not long previous to the Revolutionary War, and

their voyages extended to the West India Islands, the Bay of Mexico, Cape de Verd Islands, and coast of Guinea, until 1791, when the ship Rebecca ventured into the Pacific Ocean.

"Living men have witnessed the progress of the whale fishery, from the time when a few small vessels, with an investment of a few thousand dollars, were fitted out from a little village of a few straggling houses—their voyages limited to our southern coast. These men still live to see the whaling fleet number 662 vessels, averaging 300 tons each, employing a capital of twenty millions of dollars, their voyages limited to no sea or ocean on the face of the globe, and that little village grown up to be the beautiful city of New Bedford, with a population of 20,000 inhabitants, and owning more than half of the whole whaling interest of the United States.

"Believe me, very sincerely and respectfully yours,

"WM. T. RUSSELL."

"Hon. WM. H. SEWARD, Washington."

THE AMERICAN FISHERIES.

AUGUST 14, 1852

The message of the President of the United States, transmitting information in regard to the fisheries on the coasts of the British Possessions in North America, being under consideration, Mr. Seward said:

Mr. President: When this debate was suspended on Thursday last, a question had just arisen, whether the executive administration had been censured here for its conduct in regard to this subject.

The honorable Senator from Virginia, [Mr. Mason,] Chairman of the Committee on Foreign Relations, when addressing the Senate, remarked that if the President had done his duty, the whole naval force of the country had been already sent into the northeastern seas to protect the rights of American fishermen against British cannon. The honorable Senator from Maine, [Mr. Hamlin,] the honorable and distinguished Senator from Michigan, [Mr. Cass,] and the honorable Senator from Arkansas, [Mr. Borland,] declared that they fully concurred in all that had been said by the honorable Senator from Virginia.

Now, it is quite certain that the whole naval force of the country has not even yet been sent into those seas, and I suppose it equally certain that at that time none had been sent there.

The honorable Senator from Arkansas, [Mr. Borland,] expressed astonishment and regret that the President had not, without a call, sent here all the information which he possessed. He complained that the Secretary of State had "treated the subject wrongly in what has been called his 'proclamation,'" that it "cast doubts on the rights of the fishermen." Alluding to rumored negotiation at Mr. Webster's country residence, he declared his opinion that the place was ill-chosen, and indeed that negotiation

there, or even here, under the circumstances, ought to be reprobated altogether. The honorable Senator from Connecticut, [Mr. Toucey,] asked what was the meaning of the notice published by the Secretary of State. Was it designed to induce our fishermen to retire from their pursuits—to invite us to surrender the rights secured to us by the convention of 1818? The honorable senator was pleased to express his sorrow that he could not have confidence in the administration, and also an opinion that it needed to be prompted. The honorable and esteemed Senator from Louisiana, [Mr. Soule,] was more cautious; but even he complained that some of our rights in the fisheries had "brutally been torn away" "in the midst of the most profound peace," and "when England was incessantly receiving most profuse tokens and manifestations of condescension, and was allowed to turn to her own advantage and profit the good will indulged toward us by *Nicaragua*, and had been allowed to introduce her bankers into our treasury, as agents in the payment of our debt to Mexico. These," said the senator, "I repeat it again, are strange times indeed." Again that senator argued, that Mr. Webster had erred when he said, in the notice published by him, that it was "an oversight in the American Government to have made so large a concession to Great Britain in the convention of 1818." Further the honorable senator said:

"We may, for aught we know, have negotiated away, by treaty, a branch of our revenue, with the hope that we would silence the roaring lion; but the lion still roars, it seems, and will roar until he frightens us out of those bounds the participation in which we acquired by original occupation, if not otherwise: which we retained as a constitutive element of our separate existence as a nation; which war itself could not wrest from us; which we hold under no grace or favor of any one, but under the sufferance of God alone, and under the highest sanctions of the laws of nations; for, in the language of the now redeemed negotiators, who signed the convention of 1818, ours is a right which cannot exclusively belong to, or be granted by, any nation. Sir, I ask it of you, would that be an attitude becoming this great country? But I believe not in these rumors; it cannot have escaped that wise and clear-sighted person who now holds the seals of the state, and whose great mind and exalted patriotism are equal to any emergencies, that to negotiate under such circumstances, and sign a treaty, whatever its merits in other respects be, were to sink in the dust what of pride, what of dignity, what of honor, we have grown to in the rapid race which we had been running since we became a nation."

I disclaim the idea, that these strictures impute want of patriotism or of fidelity to the administration; but, when taken together with the facts which they assume, they seem to me to import a censure of this effect and extent, viz: that her Britannic Majesty's government has recently set up a new construction of the convention of 1818, by which it proposes now to draw lines from chief

headland to chief headland, and thus to exclude American fishermen from the Bays of Fundy, Chaleur, and Mirimachi, and also from the Straits of Northumberland and the Gut of Canso, all of which have hitherto been enjoyed by our fishermen; and that her Britannic Majesty's government has sent a large naval force into those waters to enforce that new construction, and has so attempted to bring us to negotiate for maintaining national rights at the cannon's mouth; that the executive has not acted with sufficient promptness and decision, has not properly resented an insult and an indignity received, and has already negotiated, or may be negotiating, or about to negotiate, in the presence of that naval force, in derogation from the interest or dignity or honor of the United States, and that Great Britain has been emboldened and rendered thus insolent by previous diplomatic triumphs over the present administration.

Sir, I take leave to say that there is a presumption, a violent presumption, against the soundness and the justness of all such censures. There is no want of firmness or of boldness in asserting American rights here or in the House of Representatives. Experience has shown, that the executive department has generally been quite as firm and as bold as Congress. Sir, the fisheries are a commercial interest. By peculiar fidelity in guarding such interests, this administration has deservedly gained the confidence of the commercial classes, the conservative classes of the country. The fisheries are practically and peculiarly a northern interest. In the geographical balance they were once weighed against the free navigation of the Mississippi. The President of the United States and the Secretary of State are northern men. Each began, and, when he shall have closed his public career, each will rest in the associations of the north.

More than this: the fisheries are an interest of the states of Massachusetts and Maine, which practically are undivided and inseparable in commercial fortunes. The Secretary of State, in whose department this properly belongs, is a man of Massachusetts—is it too much to say *the* MAN of MASSACHUSETTS? The ocean, with its fisheries, washes the shore of the farm on which he dwells. Nay, sir, he is an angler himself, I am told, and of course he is a good one, for he is not half and half in anything. He tills the sea, and I fear his principal harvests are gathered upon it; are gathered with the line, and not with the sickle. There is a strong

presumption that the Secretary would be faithful to an interest so near to himself and the constituency to whom he chiefly owes the long public life which he has enjoyed. A distinguished artist of our country has enriched our academies with a national painting. It represents the Secretary of State defending the honor and fame of Massachusetts against the assault of an eminent orator of South Carolina, [Mr. HAYNE.] That is a heroic piece; let honorable senators here take care that they do not provoke the artist to produce a comic counterpart, in which the Senators from Arkansas and Louisiana [Mr. BORLAND and Mr. SOULE] may be presented in the act of saving Massachusetts from desolation brought on through the timidity of her own, her chosen and honored statesman. Such a picture might enter into a new and interesting series of political illustrations, to be entitled "The Vagaries of a Presidential Election."

Mr. President, the statesman thus impeached for want of boldness and firmness in defending his country's maritime rights, is he who replied to Great Britain, when claiming for the last time the right to "search" American vessels, "The ocean is the sphere of the law of nations; every vessel on the seas is, by that law, under the protection of the laws of her own nation." "The practice of impressing seamen from American vessels cannot hereafter be allowed to take place." "In every regularly-documented American merchant vessel, the crew who navigate it will find their protection in the flag which is over them."

Sir, the statesman thus impeached for being unreliable in defending the interests of Massachusetts, is he who, in the memorable debate to which I have referred, achieved his triumph with the words:

"I shall enter on no encomium upon Massachusetts. She needs none. There she is. Behold her, and judge for yourselves. There is her history; the world knows it by heart. The past is at least secure. There is Boston, and Concord, and Lexington, and Bunker Hill—and there they will remain forever."

I shall enter into no encomium on the Secretary of State—he needs none. I should be incompetent to grasp so great a theme, if it were needed. The Secretary of State! There he is. Behold him, and judge for yourselves. There is his history; there are his ideas—his thoughts spread over every page of your annals for near half a century. There are his ideas, his thoughts impressed upon and inseparable from the mind of his country and the spirit

of the age. The world knows them all by heart. There they are, and there they will be forever. The past is at least secure. The past is enough, of itself, to guarantee a future of fame unapproachable and inextinguishable.*

Mr. President, a simple narrative shall now accomplish the two purposes for which I address the Senate. It shall show that the censures of honorable Senators are erroneous, and it will lead us to an exact knowledge of the issue involved in the question which occupies the Senate.

I pass by the treaty of 1783. All the world knows that, in common with the people of England, we were subjects of the King of Great Britain, and that in the war which terminated that connection we secured not only independence, but also an equal right, in common with those who remained subjects, in the fisheries, which had before been enjoyed in common. I pass by the treaty of 1815. It was a treaty concluded at the end of our second war with Great Britain. In that treaty, no allusion whatever was made to the subject; and so Great Britain contended that our rights to the fisheries were gone with the war, because they had not been re-established by the treaty of peace. We maintained, on the contrary, that we retained *all* those rights, because they had not been surrendered in the treaty of peace. The convention of 1818 was a convention made for the purpose of settling this great dispute, and did settle it in this way. The United States took, under it, the equal right to fish in common with his Britannic Majesty's subjects, in the waters that wash the southern coast of Newfoundland, from Cape Ray to the Rameau Islands; on the northern and western coasts of Newfoundland, from Cape Ray to the Quirpon Islands; and also the right to fish along the Magdalene Islands, and from Mount Jolly, on the southern coast of Labrador, to and through the Straits of Belleisle, and thence northward indefinitely. Here, on this map, you see these common fishing grounds. By that convention, the United States renounced all right to fish anywhere within the distance of three miles of the shore, within any other of the coasts, bays, creeks, or harbors of his Majesty's dominions in North America, or to enter them for any cause but distress and want of wood and water. The fisheries to which this provision was applicable were on the excepted coasts

* Mr. Webster highly appreciated the magnanimity of Mr. Seward in this instance, and acknowledged it in the handsomest terms.—Ed.

of Nova Scotia, New Brunswick, Cape Breton, Prince Edward's Island, and a portion of Canada, called Gaspe. You see them all here on the chart.

Will the Senate please to notice that the principal fisheries in the waters to which these limitations apply, are the mackerel and the herring fisheries, and that these are what are called "shoal fisheries;" that is to say, the best fishing for mackerel and herrings is within three miles of the shore. Therefore, by that renunciation, the United States renounced the best mackerel and herring fisheries. Senators please to notice also, that the privilege of resort to the shore constantly, to cure and dry fish, is very important. Fish can be cured sooner; and the sooner cured, the better they are, and the better is the market price. This circumstance has given to the colonies a great advantage over us in this trade. It has stimulated their desire to abridge the American fishery as much as possible; and indeed they seek naturally enough to procure our exclusion altogether from the fishing grounds. Such was the convention of 1818, and such its effects.

On the 14th of June, 1819, the British parliament passed an act for the purpose of carrying the provisions of this treaty into effect, by which they authorized the king to issue orders in council. By orders in council, the government of Great Britain provided for the seizure of persons trespassing within the forbidden fishing grounds, or abusing the conceded privileges.

The provincial government of Nova Scotia, in 1836, passed a very stringent law for the purpose, or under the pretext, of preventing encroachments by American fishermen; and simultaneously with this act, they set up the claim to exclude the American fishermen from entering the great bays of Fundy and Chaleur, and all other great bays; and also to shut up the Gut of Canso, to prevent American fishermen from using that very necessary channel to reach the Straits of Northumberland and the Gulf of St. Lawrence. That province asserted, at the same time, that by the true and just construction of the convention of 1818, we were excluded from the British harbors and waters, except in case of actual distress; and authorized the police to assume to judge absolutely what were cases of distress, and when the plea was at end; and declared it a cause of forfeiture, also, when a fisherman came in for wood or water, without showing that he had been well supplied when he left home. The province also declared it an abuse

and ground of forfeiture, when our fishermen baited fish within three miles from the shore, for the purpose of tempting them out into the deep sea; and also when they *prepared*, within three miles of the shore, to fish outside those limits.

Moreover, the Nova Scotia statute rendered it almost impossible for a fisherman to defend a just cause, because it allowed only a month in which to prepare his defence, and cast the *onus probandi* on the party libelled. Mr. Stevenson, and after him Mr. Everett, remonstrated with the Imperial government against this atrocious act, and insisted on the same construction of the act we now demand. The Imperial government indulged a desire to accommodate, and submitted such a proposition to the colonial authorities of Nova Scotia. That colony resisted, as I think did all the others; and Nova Scotia requested the opinion of the law officers of the crown on the construction of the treaty in regard to all the points to which I have thus adverted. Those law officers confirmed all the pretensions of the Nova Scotians. Under these circumstances, the British government, declaring their adherence to the construction given by the law officers, yielded to the appeal of the United States so far as to grant, as a concession, that the Bay of Fundy should be open to the American fishermen, subject to the limitation of not going within three miles of the shore, and *they declined to concede more*. The American minister, Mr. Everett, received this not as a concession, but as a right. The British minister insisted that it should be regarded not as a right, but as a concession.

Mr. Everett wrote on the 25th of March, 1845, thus:

"I received a few day since, and herewith transmit, a note from Lord Aberdeen, containing the satisfactory intelligence that, after a reconsideration of the subject, *although the Queen's government adhere to the construction of the convention which they have always maintained, they have still come to the determination of relaxing from it, so far as to allow American* fishermen to pursue their avocations in the BAY OF FUNDY."

So, the one party calling it a "concession," the other defining it a "right," the privilege of fishing, or the right to fish within the Bay of Fundy, except within three miles of the shore, was admitted, and so has constituted a departure, in one instance and on one point, from the rigorous construction otherwise pertinaciously adhered to by the government of Great Britain.

What the British government had thus conceded as a relaxation, the colonial authorities still declared was unwise; and although this concession had been made, yet all that time, as well as ever

since, the provincial authorities have insisted upon the technical and rigorous construction of the treaty, and the United States upon the more liberal and just one. The Imperial government, although it adopted and has adhered to the provincial construction, has nevertheless always declined to maintain it practically by force. Such have been the attitudes of the three parties heretofore. Such are their attitudes now.

Now, sir, during all this time, and I do not know how long before, the Imperial government has kept some naval force in those seas, for the purpose of preventing encroachments and abuses by American and French fishermen; and the colonies have, at all times, I believe, made some show of naval force for that purpose, or on that pretext.

In the last year, a new administration, with the Earl of Derby at its head, obtained the control of the Imperial government. That administration was understood to favor the principle of *protection*. The United States pay considerable bounty to their fishermen—bounties amounting to about $300,000 a year;—and they impose a duty of 20 per cent. on foreign fish.

The colonial fishermen claimed of the new ministry, as they had been in the habit of claiming of the old ministry, the assent of the royal government to the granting of bounties; and they complained to the new ministry, as they had been in the habit of complaining to the old one, of the encroachments of the American fishermen. The colonial authorities last year, by reports and resolutions, threatened retaliation against the United States in some form, if these claims and complaints should be disregarded.

Under these circumstances, the Imperial government, in 1851, proposed to the President of the United States to negotiate concerning the questions raised by the British colonies, and submitted, through Sir Henry Bulwer, a schedule of the terms or principles upon which that government would negotiate, for the purpose of settling what they were pleased to call the commercial intercourse between the provinces and the United States. The President of the United States altogether declined to negotiate; and he referred the subject to the Congress of the United States, in his annual message of December last, in these words:

"Your attention is again invited to the question of reciprocal trade between the United States and Canada and other British possessions near our frontier. Overtures

for a convention upon this subject have been received from her Britannic Majesty's Minister Plenipotentiary, but it seems to be in many respects preferable that the matter should be regulated *by reciprocal legislation.* Documents are laid before you, showing the terms which the British government is willing to offer, and *the measures which it may adopt, if some arrangement upon this subject shall not be made.*"

Thus, in December last, was Congress invited by the President to consider the subject out of which all the present difficulties have arisen; and we then had this notice from the British ministry, viz:

"Her Majesty's government are prepared, on certain conditions and with certain reservations, to make the concessions to which so much importance seems to have been attached by Mr. Clayton, namely—to throw open to the fishermen of the United States the fisheries in the waters of the British North American colonies, with permission to those fishermen to land on the coasts of those colonies, for the purpose of drying their nets and curing their fish; provided that, in so doing, they do not interfere with the owners of private property, or with the operations of British fishermen."

Congress did nothing, said nothing, thought nothing, on the subject. The colonies, in the meantime, contined to complain of encroachments, and continued to demand the consent of the Imperial government to the granting of bounties. The Imperial government answered that, to remove the complaints of the colonies, they would not object to measures being taken by the colonies themselves for the granting of bounties, and that they would send an additional force to protect them against encroachments. Such a force was sent, and simultaneously with sending it, the British minister here, on the 5th of July last, informed the President of its coming, and its objects, in the following communication:

"I have been directed by her Majesty's government to bring to the knowledge of the government of the United States a measure which has been adopted by her Majesty's government to prevent a repetition of the complaints which have so frequently been made, of the encroachments of vessels belonging to citizens of the United States and of France upon the fishing grounds reserved to Great Britain by the convention of 1818.

"Urgent representations having been addressed to her Majesty's government by the governors of the British North American provinces, in regard to these encroachments, whereby the colonial fisheries are most seriously prejudiced, directions have been given by the Lords of her Majesty's Admiralty, for stationing off New Brunswick, Nova Scotia, Prince Edward's Island, and in the Gulf of St. Lawrence, such a force of small sailing vessels and steamers as shall be deemed sufficient to prevent the infraction of the treaty. It is the command of the Queen that the officers employed upon this service shall be especially enjoined to avoid all interference with the vessels of friendly powers, *except where they are in the act of violating the treaty,* and on all occasions to avoid giving ground of complaint by the adoption of harsh or unnecessary proceedings when circumstances compel their arrest or seizure."

Let us now see what force it is that has been sent into the field of the dispute. There is the *Buzzard*, a steamer of six guns; the *Sappho*, a sloop of twelve guns; and the *Bermuda*, a schooner of three guns, sent to the Straits of Belleisle, and on the coast of

Newfoundland, where we have an unquestioned right of fishing, and where there is no controversy. Then there is the *Devastation*, a steamer of six guns; the *Arrow* and the *Telegraph*, of one gun each; and the *Nettley*, of two guns, in the Gulf of St. Lawrence; making in the whole seven vessels, with a total of thirty-one guns, sent by the Imperial government into those waters. If you add to this force the flag-ship of Vice-Admiral Seymour, the *Cumberland*, with seventy guns, there are altogether one hundred and one guns. This is the naval force which has been sent into the north-eastern seas.

Now, I desire the Senate to take notice what force was there *before* this great naval force was sent. Last year there was the flag-ship, the *Cumberland*, commanded by the same Sir Charles Seymour, with seventy guns; a frigate, of twenty-six guns; two sloops, of sixteen guns; and one steamer, of six guns; making, in the whole, sixty-four guns without the *Cumberland*, and, including the *Cumberland*, one hundred and thirty-four guns.

Then this mighty naval demonstration, which has so excited the Senate, and roused its indignation, and brought down its censures upon the administration, consists in a reduction of the naval force which Great Britain had in those waters a year ago, from one hundred and thirty-four to one hundred and one guns. What the British government has done has been to withdraw some large steamers, because they were not so useful in accomplishing the objects designed, or because they would be more useful elsewhere, and to substitute in their place a large number of inferior vessels, either more efficient there, or less useful elsewhere.

The Senate will understand me. I do not say this is the whole force which is in those waters. There is an increase, I think, on the whole, which is furnished by small vessels of the different provinces; Canada having sent one; Newfoundland one; Nova Scotia four. But the question I am upon, and the real question now is, what the Imperial government has done, and so I say the British government has reduced the number of guns employed.

Now, when this force was approaching, a letter from Sir John Packington, bearing somewhat the tone of a proclamation, appeared, and at the time was magnified and applauded by the colonial newspapers in a most bellicose manner; and before the letter

of the British minister could have been read or received by the President of the United States, an alarm went abroad throughout the fisheries, and along the north-eastern coasts. It was exactly at the season when the fishermen were going to the ocean fields to gather their autumnal harvests. The President, it seems, took pains to obtain information informally, and he caused it to be published in a notice issued by the Secretary of State, and dated at the Department of State, July 6, 1852, and which has been called here the "proclamation" of the Secretary. The Senate will see that the Secretary of State set forth such unofficial information as had been obtained, and all the information was unofficial, and stated the popular inference then prevalent, saying that the Imperial government "appeared" now to be willing to adopt the construction of the convention insisted on by the colonies. Inferring, from circumstances, the hazards and dangers which would arise, he set forth the case precisely as it seemed to stand. He adverted to the question understood as likely to be put in issue, and admitting that technically the convention of 1818 would bear the rigorous construction insisted on by the colonies, he declared the *dissent* of the government of the United States from it; and then communicated the case to the persons engaged in this hard and hazardous trade, that they might be "on their guard."

I am surprised that any doubts should be raised as to the proclamation being the act of the government. I do not understand how a senator or citizen can officially know that the Secretary of State is at Marshfield, or elsewhere, when the seal and date of the department affirm that he is at the capital. I would like to know where or when this government or this administration has disavowed this proclamation.

In issuing this notice, the Secretary of State did just what the Secretary of State had been in the habit of doing in such cases, from the foundation of the government, viz: he issued it to put citizens on their guard in a case of apparent danger, resulting from threatened embarrassment of our relations with a foreign power. The first notice of the kind which I have found in history, is a notice issued by Thomas Jefferson, Secretary of State under George Washington, to the merchants of the United States, informing them of the British orders in council, and of the decrees of the French Directory, and of the apprehended seizure

and confiscation of American vessels under them; and assuring the American merchants that, for whatever they might unlawfully lose, the government of the United States would take care that they should be indemnified. I brought that to the notice of the Senate heretofore; and upon that ground, among others, they have twice sanctioned a bill providing for the payment of losses by French spoliations. The notice published by Mr. Webster was of the same character and effect. Since that time, the "Mississippi," a steam war frigate of the United States, has been ordered to those waters, to cruise there for the protection of American fishermen in the enjoyment of their *just* rights. Thus ends the whole story of these transactions about the fisheries. The difficulties on the fishing grounds have "this extent, no more"—they are the wonder of a day and no longer.

No negotiation has been had between the President of the United States and the English government. No negotiation is now in progress between the two governments. No negotiation has been instituted between the two governments, for any purpose whatever. No overture of negotiation has been made by the British government since the last year, and no overture has been made by the American to the British government. So, then, it appears that nothing has been negotiated away at the cannon's mouth, because there has been no negotiation at all, either at the cannon's mouth or elsewhere. There has been no negotiation under duress, because there has been no pretence of a design by the Imperial government to enforce its rigorous construction of the convention of 1818, or to depart from the position of neutrality, if I may so call it, always heretofore maintained. All the change is, that, in August, 1851, the British government had 134 guns on that station; and now, in August, 1852, it has 101 guns; and this famous Sir Charles Seymour, who sweeps away, not only fishermen's smacks, but also the icebergs coming down from Hudson's Bay and off the coast of Labrador, with his "broom," is the admiral of the whole station of British North America—a field of duty which reaches from Central America to the North Pole. He has two head-quarters: one at Bermuda, in the winter; and the other at Halifax, in the summer. This same Admiral Seymour was in those seas with his broom last year, just as he is this year, and yet he excited no alarm then. He has four trusts to execute for his government with the small force at his command,

of which his flag-ship constitutes the largest portion. The first of these is to protect British rights in the vicinity of Cuba, just as the United States last year sent a vessel to maintain their rights and perform their duties there. His next duty is to secure British rights at Greytown, just exactly as the United States ought to have had a vessel there to secure their rights. The third duty is to watch Solouque, the Emperor of Hayti, to prevent him from subjugating the Dominican colony, which the British government is bound to do by an arrangement existing between the United States, Great Britain, and France; and the fourth duty is to protect British rights in these fisheries against encroachments and abuses by whomsoever may come along. The season of fishing is in the summer; and, therefore, the admiral arrives at Halifax with his broom during that season; and perhaps, also, he comes north because the weather is more pleasant. There have been since that time some seizures—four or five, I believe; but, in this there has been nothing new. I have before me a list of seizures of American vessels for the violation of the provisions of the convention of 1818, from the year 1839 to the year 1851. They amount in the whole to twenty-eight vessels, and it is insisted by the Imperial government that they were all made on the grounds of violation and abuses of the convention of 1818, as construed by ourselves.

There may have been mistakes, and probably instances of oppression, but the British government is understood to have disclaimed any such. More or less of these seizures have been brought to the notice of the government of the United States from 1839 to this time. Yet there has been no war—no declaration of war; but, on the contrary, there has been the most pacific spirit on both sides which could be imagined. In 1836, Mr. Forsyth, the then Secretary of State, was so pacific and friendly, that he informed Mr. Bankhead, *by direction of the President*, that "masters, owners, and others, engaged in the fisheries," were to be informed by the collectors "that complaints had been made, that they were enjoined" to the strict limits assigned for taking fish under the convention of 1818. So in that year the Secretary of the Treasury addressed a circular letter to the collectors of customs, directing them to instruct the American fisherman not to encroach "upon the fishing grounds secured exclusively to British

fishermen by the convention of 1818." So in 1839, Mr. Vail, acting Secretary of State, in an official communication, said:

"Under the supposition that many of the seizures had been made upon insufficient grounds, and in order, if possible, to preclude for the future the recurrence of such proceedings, the acting Secretary of State, in a note dated the 10th of July, called the attention of the British Minister to the cases of seizure which had come to the knowledge of the department, and requested him to direct the attention of the provincial authorities to the ruinous consequences of the seizures to the owners of the vessels, whatever might be the issue of the legal proceedings instituted against them, and to *exhort* them to exercise great caution and forbearance in future, in order that American citizens, *not manifestly* encroaching upon British rights, should not be subject to interruption in the pursuit of their lawful vocations."

Sir, I think you now see that the present administration has roared, in tones of defiance of Great Britain, at least as loud as these utterances of the administrations of Mr. Van Buren and of General Jackson. It has been a ground of censure, and a ground of complaint and a cause of excitement here, that no notice was given by the British government to the United States, that they had changed their construction of the treaty. That is all right. It is a good ground of complaint, provided the condition holds. If they had changed the construction of the treaty, they ought to have given us notice; but if they had not changed, then the complaint of want of notice must fail.

It has been complained here that the President withheld information. It is enough to know that he had nothing official worth communicating; and that, when requested, he furnished all that he had.

If I have been successful, I have shown the Senate that there is not in the present difficulties about the fisheries any ground of alarm—precisely for the reason that nothing new has occurred. That circumstances remain just exactly as they were; that there is no ground to apprehend a war, because the dispositions of the British government remain just as pacific as they were before; and the dispositions of the colonies to retaliate were well known before; and that if there were reasons for censure in any quarter, it must fall elsewhere, and not on the administration. The President transferred the subject to Congress last December. The Senate implies that this was right, because it rejects the idea of negotiation. Who, then, has a right to complain? Is it Congress, that the executive has not acted? or is it the administration, that Congress has been silent?

I shall be told, indeed, that the notice of the British minister

was ambiguous. But it was no more ambiguous than the well-understood reserve practiced by that government for a dozen and more years past.

The executive is not to be censured for not having resisted the British force, for there has been none there in hostility to resist. It has not resented indignity, because there has been no indignity offered. This is so, unless the government of the United States shall claim a right to prescribe to the government of Great Britain what portion of her naval force, and of what kind, she shall maintain on this station, and what on that. I should like to see how the Senate of the United States would regard a notice from the British government, that we must send not more than one, or two, or five, or ten, war steamers, or ships of the line, off the coast of Nicaragua, or into the Mediterranean. The executive has acted with all sufficient promptness, and, when it seemed necessary, the "Mississippi" was sent into those waters. From accounts received, it appears that Commodore Perry found the British authorities adhering practically to our own construction of the convention of 1818. What is the Mississippi to do? She must not protect fishermen who according to our own construction are encroaching; and those who are not, seem to need no protection.

Sir, it has been complained by the honorable Senator from Louisiana, [Mr. SOULE] that Mr. Webster conceded too much in his official notice of July 6, 1851. Now, here is Mr. Webster's language. After quoting the treaty, he says:

"It would appear that, by a *strict and rigid construction of this article*, fishing vessels of the United States are precluded from entering into the bays," &c.

And, in the same connection, he adds:

"It was undoubtedly an *oversight in the convention of* 1818 *to make so large a concession to England.*"

That is to say, it was an oversight to use language in that convention, which, by a strict and rigid construction, might be made to yield the freedom of the great bays.

It is then a question of mere verbal criticism. The Secretary does not admit that the rigorous construction is the just and true one. And so he does not admit that there *is* any "concession," in the sense of the term which the honorable senator adopts. Now, other honorable senators, if I recollect aright—and particularly that very accurate and exceedingly strong-minded senator, the gentleman from Massachusetts, [Mr. DAVIS]—conceded that

the treaty *would bear* this rigorous construction, insisting, nevertheless, just as the Secretary of State did, that it was a forced and unjust one. The Senator from Louisiana dissents from him and other senators, and maintains that it will not bear that construction at all; because he says that the other portions of the convention show that the "bays" described must be bays within the British dominions. He adds that, in order to bring a bay within the dominion of any power, it must be such that its passage to the sea shall not exceed six miles in width, and that the shores on both sides belong to the power claiming dominion over the water. I cannot assent to the force of this argument of the honorable Senator from Louisiana. I am the more inclined to go against it, because I believe it is getting pretty late in the day to find the Secretary of State wrong in the technical and legal construction of an instrument. Let us test the argument. The honorable senator says, that where the government occupies both sides of the bay, and where the strait through which the waters of the bay flow into the ocean is not more than six miles wide, then there is dominion over it.

Now, sir, the Gut of Canso is a most indispensable communication for our fishermen from the Atlantic Ocean to the Northumberland Straits and to the Gulf of St. Lawrence, for a reason which any one will very readily see by referring to the map; yet the Gut of Canso is only three-quarters of a mile wide. I should be sorry to adopt an argument which Great Britain might turn against us, to exclude us from that important passage.

Again I recall the honorable senator's argument, viz.: "Two things unite to give a country dominion over an inland sea. The first is, that the land on both sides must be within the dominion of the government claiming jurisdiction, and then that the strait is not more than six miles wide; but that if the strait is more than six miles wide, no such jurisdiction can be claimed." Now, sir, this argument seems to me to prove too much. I think it would divest the United States of the harbor of Boston, all the land around which belongs to Massachusetts or the United States, while the mouth of the bay is six miles wide. It would surrender our dominion over Long Island Sound—a dominion which I think the State of New York and the United States would not willingly give up. It would surrender Delaware Bay; it would surrender, I think, Albemarle Sound and the Chesapeake Bay; and I believe

it would surrender the Bay of Monterey, and perhaps the Bay of San Francisco, on the Pacific coast.

Sir, it seems to me that we have been laboring for the last fortnight under a strange misapprehension: that we have been arguing here the freedom of the seas—of open and broad seas—the freedom of great bays, which freedom is not now practically denied, or newly brought in question. It is true that the British government deny our right to enter the great bays, but it is equally true that they have done so for thirty years; and it is equally true, moreover, that, for thirty years, we have practically exercised the right, and that we are exercising it now just as we have done throughout all that period.

Now, how has all this confusion come into the Senate, and how is it that we are alarming, perplexing, and bewildering the country in so idle and cruel a manner? What ground has there been for assuming that the British government had determined to revise the convention of 1818, and to enforce its construction by arms? On what did senators base their apprehensions and build this excitement? The honorable Senator from Michigan, [Mr. Cass] quoted from three newspapers, but neither of them was an organ of the Imperial government, nor even a *British* newspaper. He quoted from merely provincial journals; and I believe that two of the three journals were anti-ministerial papers. Moreover, such as they were, they did not assume to speak by authority, but only on report, and by way of conjecture. Perhaps with those journals "the wish was father to the thought;" and they thought that their brethren "down South" would soon take a new lesson from the presence of an assumed extraordinary force in the fisheries. My honorable friend from Louisiana based his censure on the administration for possibly negotiating away valuable national rights on what he called a "semi-official announcement" of the fact in the "*Telegraph*," a small newspaper in this city, which is not, as I understand, an organ of this administration, but can pretend to no more than a desire, perhaps, if it should survive, as I fear it may not, to become the organ of a future one. The honorable senator, however, most candidly confessed, when called upon to name the paper, that he called the announcement "semi-official," not from any official character that the paper bore, but from the authoritative manner which it assumed. A case may be easily made out against the administration, if you will quote from

the papers, friendly or otherwise, which make up their articles from telegraph reports. Now, if provincial newspapers are authority on one side of a case, I am sure that they are equally so on the other. I am very happy to produce such, for the purpose of restoring the equanimity of the Senate. I read from the "New Brunswicker," a provincial paper, of the date of August 3d, 1852:

"Nearly all the American papers we have seen labor under the erroneous impression that the Imperial government is about to enforce the *legal* construction given to the convention of 1818 by the crown officers of England, and prevent Americans from fishing, except at the distance of three marine miles outside of lines drawn from headland to headland. We have good authority for asserting that such is not the case. It is quite true that since the opinion of the Attorney General and Advocate General of England was given upon the case submitted by the legislature of Nova Scotia, the government of that colony, upon the urgent request of the fishermen, has evinced a desire to carry out the extreme *legal* view of that convention; but the Imperial government has steadily refused to take that view of the case, conceiving that American fishermen might properly claim to fish anywhere outside of three miles of any part of the coasts of British North America, even within bays more than six miles wide.

"Acting under this impression, the Imperial government has for some years sent a few sloops of war, or other smaller armed vessels, to cruise during the fishing season along the shores of the colonies, to prevent foreign vessels from fishing within three miles of the land. But these vessels had each such a large extent of coast to watch over, that the duty of keeping foreign fishermen three miles from the land was indifferently performed; and the trespasses and encroachments have consequently increased every year, until they could be borne no longer. The colonies found they must take the affair into their own hands, or else abandon their shore fisheries to the people of the United States, who, by the convention of 1818, 'renounced *forever* any liberty theretofore enjoyed or claimed to take, dry, or cure fish, in or within three marine miles of any of the coasts, bays, creeks, or harbors of her Majesty's dominions in America.'

"It was owing to these determined movements on the part of the Colonies, that the Imperial government resolved upon giving efficient assistance to protect the North American fisheries; and this assistance was offered, as our neighbors will soon learn, *not with the view of enforcing the rigid legal construction given to the convention, but absolutely to prevent the Colonial cruisers from carrying out that very construction, thereby incurring the risk of unpleasant collisions with the vessels of a foreign but friendly power.* It was to insure the continuance of peace, and prevent the possibility of hostile encounters, that the Imperial government had dispatched its vessels to the shores of North America."

Sir, there was a presumption, which it seems to me we ought to have admitted, that would have prevailed against the sounding forth of these idle alarms. For one, I want no evidence that England desires and is determined to maintain her power wherever she can, and to fortify and extend it over the world wherever she may, consistently with the rights of other nations, and, perhaps, without a very careful regard, in all instances, to those rights. But, on the other hand, I want no evidence to satisfy me that England desires peace with the United States.

The vast commerce of the world is practically divided between these two capital maritime powers, and is as yet largely in the

hands of England. The British nation is a mercantile one. We also are a mercantile people with whom England deals largely, and we are agents in carrying on a large portion of the commerce of England with other countries. The trade between the two countries employs 10,000 American vessels and 9,000 British vessels, with an aggregate tonnage of three millions of tons. The comfort and welfare and happiness of the British nation depends, as do our own largely, on the preservation of that commerce. War between the two nations would sweep it from the ocean. The ministry that should involve that nation in war with the United States, would be driven from power by public indignation, arising out of universal calamity and distress.

England is a manufacturer. Her imports in all her domains are valued by hundred of millions annually, and her exports are equivalent. She needs raw materials—cotton and wool and other articles, and bread-stuffs and provisions. And to get these, while extending the markets for her manufactures, she bends all the policy of her commercial and fiscal systems. We furnish those indispensable supplies lavishly, and we consume her fabrics of iron, cotton, flax, wool, silver, gold, every thing in preference to manufacturing for ourselves. A war with the United States would close these relations at once, and the artisans and laborers of England would be involved in calamities such as they have never yet known.

England is a creditor nation. We are debtors to her. Heaven knows how much capital is not accumulated in England. It is a capital that has been gathered through a thousand years, by a nation of wonderful and world-searching sagacity, industry, and enterprise. We employ of that capital all that we can obtain, for we have need of it all, to bring at once into sudden development and perfection vast and perpetually-extending regions, which, for near 6,000 years, were, by civilized man, untrodden and unknown. A large portion of our public debt is owned in England. Large masses of our state debts are owned there. In addition to that, our merchants are indebted to England I know not how much; but I have known the time when the whole public and private debt of the United States, owed to British subjects, was not less than $250,000,000. The interest on this debt constitutes the support of a considerable portion of the British community.

England, then, cannot wisely desire, nor safely dare, a war with

the United States. She knows all this, and more: that war with the United States, about these fisheries, would find the United States able to surround the British colonies. She would find that the dream of conquest of those colonies, which broke upon us, even in the dawn of the revolution, when we tendered them an invitation to join their fortunes with ours, and followed it with the sword; that dream, which returned again in 1812, when we attempted to subjugate them by force, would come over us again; and that now, when we have matured the strength to take them, we should find the provinces willingly consenting to captivity. A war about these fisheries would be a war which would result either in the independence of the British provinces, or in their annexation to the United States. I devoutly pray God that that consummation may come; the sooner the better; but I do not desire it at the cost of war, or of injustice. I am content to wait for the ripened fruit which must fall. I know the wisdom of England too well to believe that she would hazard shaking that fruit into our hands, for all that she could hope to gain by insisting on, or enforcing with armed power, her rigorous construction of the convention concerning the colonial fisheries.

Sir, what is the condition of England for a war with the United States at this moment? Her power has been extended over the East, and she employs nearly all her armies in India, and in Africa, to maintain herself against the natives of the one continent and the savages of the other. At this very moment, those who understand her condition best, say that her home defences are inadequate to protect her against an invasion by France. Wise and able statesmen, now representing the ruling and prevailing interest of the country, demand of the Parliament to add to their defences, by extending and reorganizing the militia; and it is a great party question in that kingdom, whether the safety of England shall be secured by such an increase, or whether it shall be left exposed to an invader.

What is the condition of English power in Canada, and in the British provinces? England has never, since the war of 1812, had so small a military force in those provinces as now. The Imperial government has maintained heretofore some show of naval defence upon our lakes. But within the last six months it has broken up the whole naval force there, and now none whatever exists. While thus showing the supposed motives to peace

on the part of Great Britain, I confess that peace is no less the interest and the instinct of our own country. The United States *might* aggrandize themselves by war, but they are *sure* to be aggrandized by peace. I thank God that the peace of the world is largely subject to the control of these two great powers; and that, while they have common dispositions toward harmony, neither has need of war to establish its character for firmness or for courage. Each has had enough of

"The camp, the host, the fight, the conqueror's career."

Some honorable senators have averred that they could not trust this administration, because of its antecedents; that Britain was induced to assume a bold tone on this question, by triumphs which she had obtained in negotiations with this administration. One general remark meets all these objections; and that is, that they are extraneous issues, each one sufficient for a discussion in itself. Any senator, who thinks the interests of the country have been sacrificed can bring it before the Senate and the country, and present it distinctly for examination.

But, sir, what are these charges in regard to Cuba? Why, as I understand, that this administration interposed to prevent an expedition, which it was alleged was fitted out in this country for that island, in violation of our neutrality laws. Was this all? If it was, let senators dissatisfied repeal the neutrality laws if they can, and not censure the President for executing them. What complaint is made in regard to Mexico? Why, that the Secretary of State employed a British banker, as an agent, to pay the instalments on the debt of this government, payable in the city of Mexico. I see nothing wrong in that. An agent was necessary, and a foreign one. I believe the money was honestly paid to Mexico, and that she was satisfied. But it is said that British creditors got a portion of the money. I know not what obligations we were under to take measures to defeat British creditors, or any others, or the British government, from obtaining satisfaction of any of their debtors. Indeed, in some of the states, there is a system of remedies founded on the principle that the creditor has a right to attach money belonging to his debtor *in transitu*.

What has the administration done, or neglected to do, in regard to the Sandwich Islands? It is understood that this imagined shortcoming of the administration consists in the President's not

having entertained, as is supposed, a proposition from the government of the Sandwich Islands, to put themselves under the protection or subject themselves to the jurisdiction of the United States. I submit to honorable senators, that they begin at the wrong end: It was settled by the last precedent that the function of annexing belonged, not to the President, but to Congress. Congress have power "to admit new states." Let senators who desire annexation, introduce the bill. I am ready to entertain the question for examination, and to act as prudence, wisdom, and the great interests of the country, shall be found to require. But I cannot prejudge a question so great, so momentous.

These alleged and mistaken triumphs of England, then, form no cumulative evidence to support the censures bestowed upon the administration in regard to the transaction in question.

And, now, what is the real question before Congress in regard to these fisheries? That question is simply this: The British colonies insist upon the rigorous construction of the convention of 1818, so as to exclude us from entering the large British bays, and distract and annoy our fishermen; and the people of the United States resist that construction, and they never will yield it. The British government approve in words, and yet, so far as their acts are concerned, refuse to support it. The controversy is thirty years old, and seems an endless one. While that question is kept up, the American fisheries, which were once in a most prosperous condition, are comparatively stationary or declining, although supported by large bounties. At the same time, the provincial fisheries are gaining in the quantity of fish exported to this country, and largely gaining in their exportations abroad. In 1844, those colonies sent us products of the fishery valued at $264,000; in 1851, the value of their fish which we received was $781,000. In 1844, they exported through our ports, to other countries, fish valued at $3,000; and 1851, their exported products were valued at $173,000!

Our fishermen want all that our own construction of the convention gives them, and want and must have *more*—they want and must have the privileges of fishing within the three inhibited miles, and of curing fish on the shore.

Consider for a moment the magnitude of the interest of the fisheries—that it employs a fleet of twelve hundred sail, managed by twelve thousand men, and a capital of four millions of dollars;

and that, together with the whale fishery, it constitutes the basis of our naval power.

Shall we not try to quiet and end this long and injurious dispute, and to procure for the fishermen not only peace and security, but also an extension of the fishing ground and its privileges? That is the question, and I am for the fishermen.

Sir, there ought to be a decision on this matter some time or other. At all events, delay is injurious and dangerous. We think the right is with us, and so I am sure it is. But nevertheless it is a question. The British government are our equals, and they hold it an open question. They quote American authorities, especially that of Chancellor Kent, against us. This shows us that they are as confident in maintaining their position as we are in maintaining ours. We can dictate no terms to Great Britain. We will not allow her to dictate terms to us.

Now, sir, can we, in any event, yield our right to navigate the Gut of Canso, and with it the fisheries of the Straits of Northumberland? No! Can we enjoy our fisheries as we ought while these disputes exist? No! Are we to leave them open, and, if so, shall our fisheries be carried on hereafter under the surveillance of an armed British squadron, and the guardianship of a naval fleet of our own?

The indications are abundant that it is the wish of the Senate that the Executive should not treat upon this subject, and I think wisely. I agree on that point with my honorable and distinguished friend from Massachusetts, [Mr. Davis.] What the colonies require is some modification of commercial regulations which may affect the revenue. This is a subject proper to be acted upon by Congress, not by the President, if it is to be acted upon at all. It must not be done by treaty. We seem to have courted the responsibility, and it rests upon us. Let us no longer excite ourselves and agitate the country with unavailing debates; but let us address ourselves to the relief of the fishermen, and to the improvement of our commerce.

Now, sir, there is only one way that Congress can act; and that is by reciprocal legislation with the British Parliament or the British colonies of some sort. I commit myself to no particular scheme, or project of reciprocal legislation, and certainly to none injurious to any agricultural or manufacturing interest. I, for one, will give my poor opinion upon the subject; and it is this:

That so long hereafter as any force shall be maintained in those north-eastern waters, an equal naval force must be maintained there by ourselves. When Great Britain shall diminish or withdraw her armed force, we ought to diminish or withdraw our own; and that in the mean time a commission ought to be raised, or some appropriate committee of this body—the Committee on Foreign Relations, the Committee on Finance, or the Committee on Commerce—should be charged to ascertain whether there cannot be some measure adopted by reciprocal legislation to adjust these difficulties and enlarge the rights of our fishermen, consistently with all the existing interests of the United States.

CONTESTED SEAT OF ARCHIBALD DIXON.

DECEMBER 20, 1852.

Mr. President:—Since I adressed the Senate in favor of allowing Mr. Dixon to take the seat he claims, provisionally, it has been pleased to receive for consideration a proposition to admit him, without reservation, as a Senator from Kentucky.

The action of the Senate, at least in one event, will be canvassed throughout the country, and for many years; I shall therefore assign the reasons for my vote.

The question involves a construction of the Constitution.

The only portions of the Constitution touching the case are these:

"Art. 1, Sec. 3. The Senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years." * * * "2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year, and of the third class, at the expiration of the sixth year; so that one third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

"Sec. 4. The times, places, and manner of holding elections for *senators* and representatives, shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators."

Kentucky has prescribed in this matter for herself, and Congress has not, at any time, by law, "made or altered any regulations" concerning it.

The following facts make up the case. On the 17th of December, 1851, Henry Clay was a Senator from Kentucky, chosen by the legislature, for six years, which would have expired on the 3d of March, 1855. Being so a Senator, he resigned by a communication to the Legislature of Kentucky, declaring that it was to take

effect on the first Monday in September, 1852. The legislature, then in session, received the resignation, and chose Mr. Dixon to fill the vacancy thus to occur, from the first Monday in September, 1852, to the 3d day of March, 1855. The legislature then adjourned. On the 29th day of June, 1852, during the recess of the Legislature of Kentucky, Mr. Clay died, and the governor of that state made a "temporary appointment" of Mr. Meriwether as a senator from Kentucky, to hold the seat *until the first Monday of September*, 1852. Mr. Meriwether immediately took the vacant seat, and held it until the Senate adjourned on the last day of August, 1852. On the 6th of December, 1852, the Senate re-assembles, Mr. Meriwether does not appear, and Mr. Dixon appears and presents his credentials, and claims the vacant seat.

Manifestly, Mr. Dixon is one of *two* senators "chosen by the Legislature" of Kentucky, "for six years," and he was chosen to fill a vacancy which has happened in the term of Mr. Clay.

The whole question turns on the point, How did this vacancy happen? Mr. Clay resigned, fixing the first Monday of September as the day when he should *vacate* his seat, and died, nevertheless, a Senator before that day arrived. Mr. Dixon was appointed by the legislature when in session, before not only the day which Mr. Clay's resignation fixed for his retirement, but also before Mr. Clay's death.

We, who maintain Mr. Dixon's title, insist that the vacancy happened by Mr. Clay's *resignation*. On the contrary, those who deny Mr. Dixon's title, insist that the vacancy happened by Mr. Clay's *death*.

Four questions arise: *First*, can a senator resign? *Second*, can a senator resigning *appoint a future day for his retirement from the Senate?*

Third. Can the proper appointing power receive such a resignation, and prospectively fill the vacancy?

Fourth. If the legislature so prospectively fill the vacancy, can the appointment be *defeated by the death* of the resigning senator before the arrival of the day fixed for his retirement from the Senate?

If a senator can resign, and can so resign prospectively, and if the legislature can so fill the vacancy prospectively, and if their action cannot be defeated by the death of the resigning senator, then Mr. Dixon's title is good, valid, and complete.

The first question is expressly decided by the Constitution, which declares that vacancies may "happen by resignation."

The second question is decided by an unbroken succession of precedents from the foundation of the government. Mr. Bledsoe so resigned, fixing a future day; so did Mr. Clay in 1842, and so did Mr. Berrien in 1852, and so did Mr. Foote in 1852.

The third question is answered with equal distinctness by precedents. The Legislature of Kentucky prospectively filled the vacancy made by Mr. Clay's resignation in 1842; the Governor of Georgia prospectively filled the vacancy of Mr. Berrien in 1852; and the Governor or Legislature of Mississippi prospectively filled the vacancy of Mr. Foote in 1852.

The only question remaining is the fourth: Can the death of the resigning senator after the legislature has prospectively filled the vacancy, and before the day fixed for his retirement, defeat the appointment of his successor already made?

No such event has happened before this, and so there is no precedent. On each side we are left to reason *a priori*.

1st. Now, it is clear that the resignation and appointment are not on any *expressed condition* that the resigning senator shall live until the day fixed for his retirement; but it is, on the contrary, on its face unconditional and absolute. There are two parties, and *only* two parties, to the act—the senator who resigns and the state which receives the resignation and appoints the successor. Both these parties agree that the resignation shall be *unconditional* and *absolute* on the face of the transaction.

2d. Has the resigning senator any reserved power over his resignation, arising from implication of law after delivering or publishing it, to revoke it or to defeat the prospective appointment of his successor already made? No! In Bledsoe's case, that senator, when the day fixed for his retirement arrived, declared his purpose to revoke his resignation, and to retain the seat. The Senate decided that he could not; that his resignation was beyond his control, and was absolute.

If the retiring senator cannot revoke his resignation, and so defeat the prospective appointment of his successor already made, then it is equally clear that he cannot, by giving up his seat and retiring before the day fixed by his previous resignation, annul the effect of that act, or defeat the prospective appointment of his successor already made; for if he could, this would be to allow

that he could do in one way what he could not do in another; that he could do by indirection what he could not do directly.

4th. What is the reason why the resigning senator may not, by revocation, or by another act of resignation in the interval, defeat the prospective appointment of his successor already made? It is because the act of resignation, when delivered or published, and especially when received and made the foundation of the prospective appointment of his successor, is a *fait accompli*,—a vacancy is perfectly made and is perfectly filled. Whatever afterward may be done or may happen, the appointed successor has a title to the place to which he is thus appointed, which is necessarily indefeasible.

5th. And now, if the retiring senator cannot defeat the prospective appointment of his successor, neither by revoking his resignation nor by a second and intermediate act of resignation, then he cannot defeat it by dying, whether his death be *voluntary* or *involuntary*. The policy of the constitution is the same in whatever way the obstruction to the act of the state appointing the successor may offer itself. The first resignation was complete and indefeasible, and the appointment of the successor is also complete and indefeasible.

I proceed to notice the objections to this view. First, that by dying before the day fixed for retiring, the resigning senator makes a vacancy which renders the happening of the one contemplated in, and consequent upon, his resignation impossible. I reply, he does *not* make it impossible. Certainly, when the day fixed arrives, the seat is vacant equally, whether the resigning senator is dead or then retires. He does one of two things—either, *first*, he makes an interruption of representation which cannot be filled up until the day for his successor to enter shall arrive; or, *second*, he makes a "temporary vacancy" which can be filled up by the competent authority until the day when the successor can enter shall have arrived. This latter view has been adopted by the Governor of Kentucky, in his temporary appointment of Mr. Meriwether, and seems unobjectionable.

2d. It is objected that the happening of a vacancy cannot be divided into two parts—*one* a resignation prospective, and the *other* an ulterior retirement from office; that the transaction is a whole, and all its parts must occur, or the resignation will be void.

But the constitution manifestly contemplates the happening of two vacancies by such a division. All the senators first chosen, were chosen for six years. The constitution declared that the seats of one-third of them should be *vacated at the expiration of two years*. But what if one of that one-third died before that day? Why, his seat nevertheless was vacated at the expiration of the *two years*, but in the mean time it was also vacated, and a temporary appointment was made to fill the temporary vacancy until the happening of the regular vacancy at the end of the two years; and so we practice on the same principle now, vacating one-third of the Senate absolutely every two years.

3d. But it is said that if a senator may resign and fix a day in future one month distant, he may fix one five years distant. And it is asked whether the Legislature, being in session when such a resignation is received, can fill the vacancy which is so postponed in effect for five years—to the prejudice of the right of the legislatures assembling afterward and before the day limited? I reply, that is a question which does not arise here. It is enough that the senator has a right to say to his state, I will serve you one, or two or three, or four years, or five years, and no longer. And the state has a right to say we will accept your services for that time, and dismiss you afterward. If a question shall arise what legislature meeting within the period has the right to fill the vacancy, it can then be met—it has not arisen here.

Thus the legality of Mr. Dixon's title seems to result from the constitution and the precedents; and assuming this view, the case presents the not unfrequent one of an ascertained vacancy occurring at a future day, and anticipated and filled, and an intervening temporary vacancy also temporarily filled and expired. If this view is correct, it is unnecessary to examine the pretensions set up, not by Mr. Merriwether, but in his behalf by senators.

Mr. President, this question has bearings upon the present and the State of Kentucky, and also upon the future and the whole Union. A rejection of Mr. Dixon, who comes with a plenary commission unanimously confirmed by the Legislature and Governor of Kentucky, and an admission, on the contrary, of Mr. Merriwether, who not only presents no such commission, but presents no claim, and does not even appear, will, I think, deeply disturb Kentucky and alarm all the other states. This alarm will be increased by the fact that the proceeding will operate to

strengthen and increase the provisional prerogatives of the governors of the states at the expense of the power conferred by the constitution on the legislatures of the states; for nothing is clearer than that the power conferred on the governors to fill vacancies was designed to be occasional, and exceptional, and subordinate to that devolved on the legislatures, which was designed to be general, complete, and supreme.

You will also excite new and painful apprehensions of another and even more grave kind. The House of Representatives is a legislative assembly, drawn out by representation of the whole Union as one undivided country and people; and the constitution of that House is a great centripetal power acting toward consolidation. But the Senate is composed of an equal delegation of the several states, appointed by the states. Senators are in a manner ambassadors of the states, and the control exercised by the states in their appointment, without interference from the center, constitutes a centrifugal force important to the preservation of the states in their qualified, constitutional independence. Hitherto the Senate of the United States has received whomsoever have been sent by the states, only examining their qualifications when desired, or deciding judicially between contestants. But if now we reject one who is sent with full authority, and whose title is not denied from without this body, and call in one who is not sent with any such authority, we shall shake the confidence which has hitherto been enjoyed by the Senate, and raise alarms for the safety of the states, and thus weaken the bonds of the Union.

NOTE.—The following is an extract from the proceedings of Congress, on the day the above speech was made. The question being taken on the resolution, declaring Mr. DIXON duly elected Senator from Kentucky, to fill the vacancy caused by the resignation of Mr. CLAY, and that he be now admitted to his seat, was adopted. Yeas 27—Nays 16—as follows:

AYES—Messrs. Adams, Atchison, Badger, Bell, Brooke, Butler, Chase, Clarke, Cooper, Davis, Dawson, Dodge of Iowa, Fisk, Geyer, Hale, Jones of Tennessee, Miller, Morton, Pearce, Rusk, Seward, Smith, Spruance, Sumner, Underwood, Upham, Wade.

NAYS—Messrs. Bayard, Borland, Bradbury, Bright, Cass, Cathcart, De Saussure, Dodge of Wisconsin, Douglas, Downes, Felch, Gwin, Mason, Morris, Toucey, Weller.

Mr. DIXON was then sworn in, and the Senate adjourned.—ED.

DEBATES

IN

THE SENATE OF THE UNITED STATES

REV. THEOBALD MATTHEW.*

DECEMBER 20, 1849.

I THINK, sir, that men often disagree in regard to the merit of the living, but seldom differ in regard to the merit of the dead. This capitol, its halls, its chambers, and its grounds, are filled with statuary memorials of the illustrious benefactors of mankind, of other nations as well as of our own; and these memorials are looked upon with pleasure and satisfaction by all the living. But there is a painful reflection that occurs to us when we raise these monuments in honor of the dead. They can convey no encouragement to the benefactor in the prosecution of his philanthropic enterprises. They convey to him no sympathy in the sufferings which he endures. The resolution before the Senate presents a very different occasion—an occasion in which we can, without danger of error, recognize a public benefactor—a benefactor of mankind; and in which the homage which is offered is unalloyed by the painful reflection that marble cannot hear and cannot feel.

I need no argument to convince me that it is unnecessary to establish any connection between this illustrious benefactor of the human race and our own country, in order to entitle him to the compliment which it is proposed to offer him, because I regard the interests of the American nation as the interests of humanity; and whoever, in any part of the globe, has relieved the condition of any portion of the human race, I look upon as entitled to the approbation and the gratitude of the American nation.

* Remarks on a resolution inviting Father Matthew to a seat on the floor of the Senate, which was adopted by a vote of 33 to 18.—Ed.

I have said that there was no danger of error. A nation, a race, interesting from consanguinity—interesting by a thousand ties—finds its virtues increased, and the condition of its people meliorated, by the labors of Theobald Matthew. Where among the living do we find a man whose works of benevolence have so speedily and gloriously followed him?

I should join in this homage—in this act of reverence—as an act of reverence to virtue alone, if no other reason was offered; but I must say with all freedom, and I trust that the freedom will be conceded to me as I concede equal freedom to others, that since it is objected that this act of respect shall not be allowed, because of the particular opinions of the person who is the subject of it, in regard to slavery, I must be allowed to say, with all respect, that I hope the American Senate will give evidence, by the unanimity with which they pass this resolution, of this sentiment—which is almost unanimous, I believe, amongst us—that if slavery be an error, if it be a crime, if it be a sin, we deplore its existence among us, and deny the responsibility of its introduction here; and, therefore, that we shall not withhold from virtue the meed which is its due, because it happens to be combined in the person of one who exhibits a devotion not more to virtue than to the rights of man.

DISCIPLINE IN THE NAVY.

DECEMBER 30, 1849.

I HAVE the honor to present a petition from mercantile and shipping houses in the city of Baltimore, having 237 names appended to it, praying for the abolition of the use of intoxicating liquors in the navy of the United States. I submit also a petition from certain mercantile houses in the city of Baltimore, signed by 250 names, praying for the abolition of flogging in the naval service of the United States. I move the reference, and take this occasion to express my concurrence in the sentiments expressed by the Senator from Massachusetts in relation to this subject, and to say that, in my judgment, whoever is allowed the privilege of admin-

istering intoxicating liquors to others daily, and of inflicting upon them corporeal chastisement for offences, has it in his power to exercise over them the control that a master exercises over his slave. I do not believe it necessary that such a relation should be established either in the army or the navy; and since it has been sometimes said that the practice of flogging in the navy must be continued because no substitute has been found for it, I beg leave to say, and your own recollection, Mr. President, will bear witness to the fact, that in the penitentiary system in the state of New York the practice of corporeal punishment has been abolished, and that discipline has been maintained with as much success with regard to labor and moral conduct as when corporeal punishment prevailed.

There was a struggle for twenty years to abolish this punishment in the prisons, which was resisted upon the ground that discipline could not be maintained without it. Five or ten years ago the punishment was prohibited, and it has never been resorted to since. There has nevertheless been, during that time, the same quiet, the same order, that prevailed before. Public sentiment seems to have entirely acquiesced in the reform which has been made, as useful, humane, and benevolent. The first argument that I have ever heard against it was that of the Senator from Florida, who read from the report of one of the wardens of one of the prisons, and drew an inference from that report, that it was the judgment of that officer that it was expedient to return to the old system. I beg leave to say to him, without detaining the Senate, that a more careful perusal of that document would show that the punishment substituted was the use of the shower-bath; and that the evil complained of was, that the mode of applying it has been so unnecessarily harsh as to have resulted in producing, as the keeper supposed, insanity in eight cases; and the keeper went on to say that he had, therefore, in a great degree, discontinued that form of punishment, and had resorted to solitary confinement as a substitute, which had been successful. The argument of the Senator from Florida, therefore, was based merely upon the fact that, having occasion to find some other punishment than flogging, they had not, in the first instance, arrived at that which was the right one.

THE RIGHT OF PETITION.

FEBRUARY 6, 1850.

NOTE.—MR. HALE. I have also received a petition from inhabitants of Pennsylvania and Delaware, stating that they believe that the federal constitution, in giving its support to slavery, violates the divine law and makes war upon human rights, and is inconsistent with republican principles; and that the attempt to unite slavery and freedom in one body politic has already brought upon the country great and manifold evils, and has fully proved that no such union can exist but by the sacrifice of freedom to the supremacy of slavery. They respectfully ask Congress to propose without delay some plan for the immediate and peaceful dissolution of the American Union.

THE VICE-PRESIDENT. The question will be on the reception of this petition.

MR. SEWARD moved that the petition be received and referred to a committee, with instructions to report that Congress had no power or motive to act for the dissolution of the Union. And on that motion, said:

MR. PRESIDENT:—I have considered the course taken by a distinguished and lamented statesman in the other House upon the occasion of the presentation of petitions of a character similar to that of the petition which is now presented—I mean the late John Quincy Adams,—and I am satisfied, as he was, that the memorial ought to be received, by way of vindicating the right of petition. I have no more sympathy than he had with the object of a petition which prays for a dissolution of this Union. I have no fear of a dissolution of the Union. I believe that it was not made by madmen, nor can madmen destroy it; and I believe none but madmen would petition for its dissolution; and my rule always is, in regard to madmen, never to have any controversy with them.

I desire that the issue involved in this question shall be distinctly understood. It is this. On the one side of the House, it is the proposition that this petition shall not be received; that is, it is a virtual *rejection of the petition*. On the other side, it is proposed that the petition shall be received, and referred to the Committee on the Judiciary, with instructions to report that the Senate

has not the power nor the disposition to entertain the question. There is no question whether the Union ought to be dissolved at all; we are unanimous against that. Under these circumstances, I shall vote for the reception of the petition, for the reasons I have stated.

Mr. Foote. Will the honorable Senator vote for the reception of a petition which he announced the other day, in our hearing, to be devised by madmen?

Mr. Seward. I have never yet seen the petition of any human being that I would not receive, and I do not know that I ever shall. It is not enough to justify me in refusing to *hear* any human being, that I have not the power to grant the prayer of his petition. The Constitution imposes no restriction or modification upon the right of petition. Petitions presented by madmen are very harmless, and the way to render them more harmless is to hear them, and give them an answer—a civil answer. It is a soft answer that turns away wrath. I believe that if no petitions upon the subject of slavery had been rejected, there would never have been a petition for the dissolution of the Union. So long as you suffer those who are disunionists to maintain a false issue upon the right of petition, so long do I believe that that right will be misused and perverted for such purpose. It is for that reason that I desire to receive this and all other petitions.

The distinguished Senator from Michigan [Mr. Cass] has adverted to one or two cases, and he asks, by way of a parallel, whether we would receive petitions under such circumstances—as, for instance, petitions to declare that there is no God? Well, sir, I have seen an incident very similar to that tried in legislative experience. I have seen large masses of men agitated by what they regarded as dangers of the union of the Church and the State, growing out of the employment of chaplains in legislative bodies. I have seen then petitions presented, and a great public effort made to compel the attention of the legislative body to a discussion of the question. They were received and kindly examined, and a disposition made of them, in accordance with the views of the legislative body.

The result on that occasion was a complete termination of the agitation. I remember also petitions presented to legislative bodies to prohibit the reading of the Bible in the common schools, and the question then arose as to the wisest way to dispose of

them. Some wished to reject and others to receive them and give them an answer. They were received, and a calm and elaborate answer made to them. That was more than ten years ago, and no petition of the kind has been since presented. No petition for the dissolution of the Union will be again presented, if we receive this, and give the answer to it that is in the mouth as well as in the heart of every member of this body. It is a simple question of reasons. We are not above giving reasons to our fellow men. George Washington himself was not above giving a reason why this Union should not be dissolved. He gave such reasons earnestly and fully in his Farewell Address. The Senate of the United States, in my humble judgment, is not above the petition of the humblest citizen of the United States, and the declaration that they cannot and will not entertain the dissolution is a question upon which they might, with great propriety and with great advantage, act at this time.

NOTE.—The reception of the petition was denied: Ayes, 3. Nays, 51.—ED

GRANTING LANDS TO EMIGRANTS.

JANUARY 30, 1850.

NOTE.—Mr. Seward had submitted the following resolution:

Resolved, That the conduct of Austria and of Russia, in the war in which those powers have subverted the nationality and the liberties of Hungary, has been marked by injustice, oppression, and barbarity, which justly deserve the condemnation of mankind, while they commend the Hungarian people to the sympathies of other nations, and especially of republican states; and that the Committee on the Public Lands be directed to inquire and report on the propriety of setting apart a portion of the public domain to be granted, free of all charges, to the exiles of Hungary already arrived, and hereafter to arrive, in the United States, as well as to the exiles fleeing from oppression in other European countries.

Mr. PRESIDENT: It will be recollected that, at a very early day in the session, the distinguished Senator from Michigan, [Mr. CASS,] introduced a resolution, in which it was proposed to instruct the Committee on Foreign Relations, to consider and report upon the expediency of suspending diplomatic relations with Austria; on which occasion that honorable senator enforced the resolution by a speech of surpassing power and interest; and that the grounds upon which he recommended the suspension of diplomatic intercourse with Austria were the oppression and barbarity of Austria

in the recent wars with Hungary. I listened with very great interest, and with deep attention, to the speech of the senator, in which he portrayed his accusations against that power. But I was not prepared, and I am not yet prepared, to think the suspension of foreign relations with Austria is the proper form of giving expression to the sentiment which is expressed by the senator, and in which I cordially sympathize, and in which, I doubt not, every member of the Senate sympathizes with him. It was under those circumstances that I submitted the resolution to the Senate, in which I have expressed this sentiment of the American people, of condemnation of the atrocious conduct of Austria, and of deep and profound sympathy with the Hungarian people in their struggles for nationality and independence.

I regret very much that the honorable Senator from Illinois [Mr. Douglas] has thought it necessary, upon the present occasion, to raise a question of comparative merit between the native-born and the foreign citizen. If the question, however, must be raised, I am free to say, that to the extent which is implied in the resolution which I have submitted, I give the preference to the foreigner, the emigrant; and that is to this extent: The man who is expelled by tyranny from his own land, in consequence of an effort to establish its nationality and independence, I give, in my sympathies, in my admiration, in my respect, a preference over one who has lost nothing, done nothing, suffered nothing, for his own freedom or for the freedom of mankind.

Further than this, I would not go; and if the Senator from Illinois has inferred that I have sympathies for men of other lands, as men, in preference to my own countrymen, he does me an injustice, which, in due time, when his proposition comes before the Senate, he will have an opportunity to correct. I, sir, have never been—I am not now—I do not know what I may be—but I never have been in favor of making the profits arising from the sale of the public lands a source of ordinary revenue in the operations of the government. I have always maintained, and I think I always shall maintain, that it is a great fund, the common property of the whole people of the United States, properly to be applied to objects of great national improvement and beneficence. And in this particular instance, I believe that a proper opportunity is afforded for us to exercise our charity toward those who are entitled to our sympathies for their own struggles for liberty

and independence in foreign lands. Sir, I have never intimated an objection, I do not now say, that I have the slightest objection to the bill insisted upon by my respectable friend from Illinois, which is, I believe, the same in principle with the proposition of the distinguished Senator from Massachusetts, [Mr. WEBSTER,] and with that introduced to-day by the distinguished Senator from Texas, [Mr. HOUSTON.] When their propositions come before the Senate, they shall have my cordial support. I only say this, that the duty of making an expression in regard to the struggles for liberty in Europe was the subject under consideration when my proposition was submitted, and nothing more. I intended to go that length; that expression, I shall humbly insist, ought to be made; and it is not wise, in my judgment, to connect it with other propositions, which will also receive my support. So that I would not have the bill of the distinguished Senator from Illinois, [Mr. DOUGLAS,] or whoever may be entitled to the paternity of it, to be allowed to embarrass the proposition which I have had the honor to submit; nor shall my proposition be allowed to embarrass that of the Senator from Illinois. I hope that I am now understood upon the subject, and that I have relieved myself from whatever censure may have arisen from a misunderstanding of my intentions.

I ask the indulgence of the Senate for one moment, in reply to some remarks of my friend from Georgia, [Mr. DAWSON.] He has alluded to the motives which he supposed to operate upon members of this body, in bringing before the Senate questions of this character. My reply to the senator upon that point will be exceedingly brief. It is, that I am here for public measures, not for private ends—that no imputation which can be made, even by a friend whom I esteem and respect so highly as I do my friend from Georgia, shall ever put me before this body, or any other, on a defence of myself against suspicions or complaints of this kind. And now, sir, the point in the remarks which I made, which elicited the most severe rebuke from my friend from Georgia was, that I had always been opposed to the applying of the current revenues arising from the public lands to the ordinary expenses of the federal government. And the senator persisted in supposing that I intended that they should be applied for no other purpose than a charity fund. I will illustrate, for the information of the senator and others, what I mean by the application of those revenues to great national purposes and objects.

The distinguished Senator from Kentucky, [Mr. CLAY,] several years since, by his great influence in the councils of the nation, secured the distribution among the several states of this Union of a portion of these and other surplus revenues of this government. I was at a distance, an humble follower and approver of that policy. The result of it in other states I do not know. But you, Mr. President, [Mr. FILLMORE,] can testify with me the result, the beneficent result, in the state of New York, from which we come. The share which was allotted to us was $6,000,000; the amount we received was $4,500,000. Every dollar of that four and a half millions, sir, more than ten years ago, went to the foundation of public schools, academies, seminaries, and other higher institutions of learning, and of libraries for the common people. And, sir, I will now state to the Senate—and I am proud that, in behalf of the state of New York, I am here this day to state it to the praise and honor of the distinguished Senator from Kentucky—the condition of the state of New York, of the people, bond and free—I might say, if we had any of the former class—native and foreigner, to which they have been brought by this act of justice—I will not call it benevolence. Sir, the state of New York, having a population of three millions of people, has not in it one child of citizen or foreigner that is not educated, from the age of five years to the age of twenty years, at the public cost and expense. Again, sir: at the distance of every mile and a half on every main road, railroad, canal, and cross-road—separated by only a mile and a half—is the school-house of New England. The schoolmaster is at home everywhere in New York, and all the time; and New York has made a trial of the blessed example of Massachusetts and Connecticut. This is what has been done in my day, since my and your experience began; and more than that: in every one of these school-houses is a public library of two hundred and fifty volumes, containing all that is interesting in ancient or modern history or science, literature, geography, and every other branch of human knowledge, open and accessible to every citizen—man, woman, and child—in the state of New York. Yes, sir, these four millions and a half have supplied us with libraries which, taken collectively, contain more than one million of volumes.

More than that, sir: there has not been left in the state of New York, the blind person who has not been taught to read his bible

—there has not been left in the state the deaf and dumb, the mute, who has not been brought to be able to give expression of his gratitude and praise to God, and to the state which has brought him from ignorance and degradation below his race. More than that, sir: we have not neglected that other unfortunate class. I have been asked why not consider the free negroes? Sir, the free negroes have been considered. This fund has been appropriated to their advancement, also; to raise their condition; to cultivate them to exercise the rights of self-government, and to carry on the great work of the emancipation of their race wherever they are found in bondage. Yes, sir, five thousand children of the African race are educated out of this great fund of national benevolence. What becomes of the reproach, then, that this is a charity? What would have been the disposition of this fund if it had been left here, sir? It would have been expended as the revenues of this country, always too large, too liberal, have been expended, in improvidence. It is therefore that I have always claimed that it should be distributed among the states, that they might apply it to works of advancement—progress—humanity.

Now, sir, there has been no diminution of the fund all this time. While we have been enjoying this four and a half millions, there is not one dollar of it gone. Every dollar is there yet. It is still in the treasury of the state of New York; and all that has been done has been done only by the *use* of the money. Tell me, sir, is it not wiser to make such a distribution of this fund than it would be to employ it in encouraging prodigality in the government; than to encourage that lust of conquest in which the Mexican war had its origin, by which were brought into this Union seven hundred and sixty-three millions of acres of public domain, to be added to the one thousand millions we had before? What has it wrought? It has proved, in the words of an honorable senator here, but a Pandora's box of evils; and we are entertained here, day after day, with the intelligence that the Union must be dissolved—that it is really now dissolved—even to-day. We employed the revenues of the public domains in extending our dominions, that were too large—unnecessarily large—already. Sir, I want no more Mexican wars, no more lust of conquest, no more of seizing the unripened fruit, which, if left alone, would of itself fall into our hands. I claim that the federal government shall be brought at once to its responsibility to the people, and

that the people shall know what it costs them to indulge it in wars of conquest.

The Senator from Georgia and the Senator from Illinois are grieved that there is a peculiar character about my proposition, in considering the case of foreigners as distinguishable from the case of American citizens. My friend from Georgia supposes that he has found a peculiarly objectionable feature in this proposition, not found in that of the honorable Senator from Massachusetts and of the honorable Senator from Texas, because it provides distinctly for foreigners, without providing for others. Sir, these remarks—and I am sorry to say, the reception, ungracious to me, which they received from the Senator from Illinois—oblige me to say what I would not have said—that the way to defeat any benevolent or charitable object is to bring into competition with it some other objects of charity which ought to be provided for first. Sir, the religion which inculcates the duty of charity gives us an admonition against such schemes for defeating the ends of charity.

Mr. Douglas. Will the Senator from New York allow me to call his attention to the fact that my bill was brought in first, and, therefore, that it is his which is in competition with mine?

Mr. Seward. I do not allude to the senator's bill. The first time that I have heard of it from a source to which I could acknowledge myself indebted for the information, was this morning; and upon that occasion I rendered to him the deserved homage of my gratitude. I claim, however, that for the senator to join with the Senator from Georgia [Mr. Dawson] in censuring me because I discriminated between foreigners and native born, was an unkind and an unnecessary return for that homage. I was going on to say, that the religion which inculcates charity at all events, and which will never exculpate him who neglects it, admonishes us also to pour oil upon and anoint with ointment—with precious ointment—the Savior while he is with us, though the Pharisee may cavil, and say that this precious ointment might have been sold, and the value of it given to the poor. It is no excuse to me for not paying this creditor, that there is another creditor there to whom I am equally indebted; because we have poor in our own country, I am not discharged from the claim of charity upon me in behalf of the exiles, whose liberties have been stricken down, and who have been driven amongst us from

their own land. Let them all come on; let them present themselves in whatever order, and to the extent of my ability I will discharge and cancel my obligations to the whole. If my friend from Georgia [Mr. DAWSON] supposes that this is a measure I am going to require him to support, as a relief of aliens, or of the alien and the foreigner, I will tell him, and I will tell the Senator from Illinois, [Mr. DOUGLAS,] that they much mistake the nature and character of my sentiments and principles with regard to aliens and foreigners. I am in favor of the equality of men—of ALL men, whether they be born in one land or born in another. I am in favor of receiving the whole. I acknowledge them all to constitute one great family, for whom it is the business of statesmen and the business of man to labor and to live. And, sir, when I do have occasion to ask the votes of those distinguished senators and friends in behalf of the alien and the foreigner, it will not be the exile, merely, who is commended to our sympathies for the sufferings he has sustained in the cause of liberty in Europe; but it will be for the melioration of the laws of naturalization, which put a period of five years and an oath in the way of any man of any country in becoming a citizen, which raise a barrier between ourselves and those who cast their lot amongst us. There is where they will find me; and they will find that to the extent that humanity bears the semblance which is impressed upon us by the hand of our Maker, it is my design and my purpose to labor to bring about that equality in the land in which I live, and as far as may be, in all other lands.

And, going upon this broad principle, I have no hesitation in saying that there is no distinction in my respect or affection between men of one land and of another; between men of one clime and another; between men of one race and another; or between men of one color and another; no distinction but what is based, *not upon institutions of government*, not upon the consent of society, but upon their *individual and personal merit*. If the Senator from Georgia [Mr. DAWSON] will test this, if he has this sympathy for free negroes which I am rejoiced to hear him proclaim, let him bring in his bill, and the first aye that shall respond to it will be mine—if none should so respond to it before my name should be alphabetically reached, shall be mine. More than that; if his sympathies embrace a class that deserve them still more—the slave—let him bring in his bill for the slave, and

my voice for emancipating the slave in any district or territory shall go for it. Nay, more; let him show me a way in which I can give a vote, an effectual vote, for the emancipation of the slave, in his own state, or any state, and I shall feel honored to participate in the movement; and my vote shall be given to sustain it, with more gladness, more gratitude, and more joy, than it was ever given upon any occasion in my life.

Sir, neither here nor elsewhere will I admit, as a rule for the government of my own conduct, that there is a distinction between men. But, on the contrary, I will walk up to the mark, assigned in the Declaration of Independence, that "ALL MEN ARE CREATED EQUAL." Sir, the first vote given by me to keep any man, or any class of men, in a condition below my own, is yet to be given. It never will be given in this place.

Mr. President, I have submitted the remarks I thought necessary to vindicate my proposition from the censure it received when it has so indirectly made its appearance before the Senate. When that proposition shall be brought before the Senate in its proper order and manner, after the Senate shall have considered the resolution of the honorable Senator from Michigan, [Mr. CASS,] I shall be pleased to state the reasons why I have submitted that proposition in detail, and the grounds upon which I have given it its present form.

ON THE CENSUS.

APRIL 10, 1850.

NOTE.—MR. KING, of Alabama, moved to strike out of the interrogatories prescribed by the Bill, the following:

"If a female, the number of children she has had known to be alive,—known to be dead."

IT appears to me that the information sought to be obtained by this clause is essential, and that it will be found to be so. It is interesting to us all, as a question of political science, to know the actual condition of every class of population in this country; and certainly it concerns the public, as well as the government, to know the actual *relative* condition of the different

classes of population. As I understand the proposition of the committee, they desire to procure information in regard to the comparative longevity of the white and black races in their various conditions. If this information be obtained, it will be useful with reference to that purpose. They desire to ascertain the number of children that each woman has borne, the number that are living, and the number that are dead, with reference to the question of comparative longevity. It is very desirable that we ascertain whatever affects the social and physical condition of the masses of society.

But there is another point. There is no woman, with great deference to the Senator from Alabama, who can have forgotten the number of children that she had borne. If it be true, as he says, that there are women who do not know whether their children be living or dead, and even how many they have borne, I should like to ascertain the number of such that there are of all races. And I desire this information because we have all cherished a hope that the condition of African servitude in this country was a stage of transition from a state of barbarism to a state of improvement hereafter. I wish to know how rapid that progress is. I believe it cannot be possible that there are any women, even in Africa, who have forgotten the number of children they have borne. If there be any in America who have forgotten that fact, so important and interesting to themselves, I wish to know it for the purpose of ascertaining the operation of our social system, and the success of that system as leading to the improvement of the African race. I wish to know also what is the extent of the education or of instruction that prevails, so as to ascertain whether they are advancing toward that better condition which constitutes the only excuse, as I understand, that we have for holding them in servitude.

SIR JOHN FRANKLIN.*

MAY 1, 1850.

I AM happy to perceive, Mr. President, indications all around the Chamber that there is no disagreement in regard to the importance, or in relation to the propriety, of a search on the part of this nation, by the government itself, or by individual citizens, for the lost and heroic navigator. Since so much is conceded, and since I come from the state whence this proposition emanates, I desire to notice, in a very few words, the objections raised against the mode of carrying the proposed design into effect. It is always the case, I think, when great objects and great enterprises, which are feasible, are hindered or defeated, that they are hindered or defeated, not so much by want of agreement concerning the measures themselves, as by diversity of opinion concerning the mode of carrying them into execution. Since this is so generally the case, the rule which I always adopt, and which seems to be a safe one, is, that where I cannot have my own way of obtaining a great public object, I will accept the best other way which opens before me. Now, I cordially agree with those honorable senators who would have preferred that at some appropriate time, and in some proper and unobjectionable manner, the government should have moved for the attainment of this object as a government, and have made it exclusively the act of the nation. And I would have preferred this, not so much on account of the glory that it is supposed would have followed it, as because of the beneficence of the enterprise. Enterprises which spring from a desire of glory are very apt to end in disappointment. True national glory is always safely attained by prosecuting beneficient designs, what-

* Remarks on Mr. Henry Grinnell's offer of two vessels for an exploration in search of Sir John Franklin.

ever may be their success. I say, sir, then, that I would have preferred the alternative suggested; but the fact is, without stopping to inquire where the fault lies, or whether there be fault at all, the government has not moved, and the reason which has been assigned is, I have no doubt, the true one. I do not know that it has ever been contradicted or called in question; that reason is, that the navy of the United States contains no vessels adapted to the enterprise, but consists of ships constructed and fitted for very different objects and purposes than an exploring expedition amid the ice-bound seas of the Arctic pole. Our naval marine consists of vessels adapted to the purposes of convoys, military armament, and the suppression of the slave trade on the coast of Africa. The executive portion of the government failed for want of vessels suitable to be employed in this particular service. It therefore devolved upon the Legislature of the United States. But, although we have been here now nearly five months, no committee of either House, no member of either House of Congress has proposed to equip a national fleet for this purpose. While this fact exists on one side, it is to be remarked on the other, that the time has arrived in which the movement must be made, if it is to be made at all, and also that a careful investigation, made by scientific and practical men, has revived the hope in Europe and in America that the humane object can be attained. There can, then, be no delay allowed for considering whether the manner of carrying the design into effect could not be changed. Let us, then, practically survey the case as it comes before us. The government of the United States has really no vessels adapted to the purpose. To say nothing of the expense, the government has not time to provide, prepare, or equip vessels for the expedition. Under such circumstances, a citizen of the United States tenders to the government vessels of his own, precisely adequate in number, and exactly fitted in construction and equipment for the performance of the duty to be assumed. Since he offers them to the government, what reason can we assign for refusing them? No reason can be assigned, except that he is too generous, and offers to *give* us the use of the vessels instead of demanding compensation for it. Well, sir, if we do not accept them, then this enterprise cannot be carried into effect; at least, not now, probably never. If we do accept them, it can be immediately carried into execution, with a cheering prospect of attaining the great object

which the United States and the civilized world have such deep interest in securing. Then the question resolves itself into this—the question raised by the honorable Senator from Alabama [Mr. KING],—whether, in seeking so beneficent an object, it is consistent with the dignity of the nation to combine individual action with national enterprise. I do not think, Mr. President, that that honorable Senator will find himself obliged to insist upon this objection after he shall have carefully examined the bill before us. He will find that it converts the undertaking into a national enterprise. The vessels are to be accepted not as individual property, but as national vessels. They will absolutely cease to be under the direction, management, or control of the owners, and will become at once national ships, and for the time, at least, and for all the purposes of the expedition, a part of the national marine.

Now, sir, have we not postal arrangements with various foreign countries carried into effect in the same way, and is the dignity of the nation compromised by them? During the war with Mexico, the government continually hired ships and steamboats from citizens for military operations. Is the glory of that war tarnished by the use of those means? The government in this case, as in those cases, is in no sense a partner. It assumes the whole control of the vessels, and the enterprise becomes a national one. The only circumstance remaining to be considered is, whether the government can accept the loan of the service of the vessels without making compensation. Now, sir, I should not have had the least objection, and indeed it would have been more agreeable to me, if the government could have made an arrangement to have paid a compensation. But I hold it to be quite unnecessary in the present case, because the character of the person who tenders these vessels, and the circumstances and manner of the whole transaction, show that it is not a speculation. No compensation is wanted. It would only be a ceremony on the part of the government to offer it, and a ceremony on the part of the merchant to decline it. I am, therefore, willing to march directly to the object, and to assume that these ceremonies have been duly performed; that the government has offered to pay, and the noble-spirited merchant declined to receive.

Now, sir, is there anything derogatory from the dignity and independence of this nation in employing the vessels? Certainly not, since that employment is indispensable. If it were not indis-

pensable, I do not think that the dignity of the republic would be impaired; I think, on the contrary, that it would be enhanced and elevated. It is a transaction worthy of the nation, a spectacle deserving the contemplation and respect of mankind, to see that not only does the nation prosecute, but that it has citizens able and willing to contribute, voluntarily and without compulsion, to an enterprise so interesting to the cause of science and of humanity. It is, indeed, a new and distinct cause for national pride that an individual citizen, not a merchant prince, as he would be called in some other countries, but a republican merchant, comes forward in this way, and moves the government and co-operates with it. It illustrates the magnanimity of the nation and of the citizen. Sir, there is nothing objectionable in this feature of the transaction. It results from the character of the government, which is essentially popular, that there are perpetual debates on the question how far measures and enterprises, for purposes of humanity and science, are consistent with the constitutional organization of the government, although they are admitted to be eminently compatible with the dignity, character, and intelligence of the nation. All our enterprises, more or less, are carried into execution, if they are carried into execution at all, not by the direct action of the government, but by the lending of its favor, countenance, and aid to individuals, to corporations, and to states. Thus it is that we construct railroads and canals, and found colleges and universities.

Nor is this mode of prosecuting enterprises of great pith and moment peculiar to this government. There was a navigator who went forth from a port in Spain, some three or four hundred years ago, on an enterprise quite as doubtful, and quite as perilous as this. After trying unsuccessfully several states, he was forced to be content with the sanction, and little more than the sanction and patronage, of the Court of Madrid. The scanty treasures devoted to that undertaking were the private contributions of a queen and her subjects, and the vessels were fitted out and manned at the expense of merchants and citizens which gave a new world to the Kingdom of Castile and Leon.

Entertaining these views now, whatever my opinion might have been under other circumstances, I shall vote against a recommittal, and in favor of the bill, as the surest way of preventing its defeat, and of attaining the sublime and beneficent object which it contemplates.

INTERNAL IMPROVEMENTS IN THE NEW STATES.

APRIL 29, 1850.

Mr. President,—This public domain is the property of the United States. It is the property of the United States in trust for the common and equal benefit of all the states. One of the ways in which it can be made use of by the United States is, to derive revenue from it, as has been done heretofore. That is a legitimate way to use it, but it is not the only way. If it be the only way, then the domain has ceased to be of any use to the United States. It has already happened that revenue has ceased to flow from the public domain. It has ceased, according to the report of the Secretary of the Treasury, for sixteen years to come. According to the estimate of the honorable Senator from Michigan, [Mr. Felch] who addressed us the other day, the fountain may flow again, within a period shorter than that. I should judge his estimate was in seven or eight years. However that may be, we all know that new appropriations will continually follow those already made, and those new appropriations will increase in magnitude. It is therefore apparent that the lands have ceased forever to contribute to the treasury of the United States; that that time has arrived which General Jackson thought it was desirable should come speedily, when the government of the United States should cease to look to this resource for revenue. I believe that time has come sooner than he anticipated. Now, I want to make the most out of the public lands for the common welfare of the United States, that can be made in some other way; and, in my judgment, the best way is to use the avails of them, or allow the states to use the avails of them, for the purpose of constructing railroads and canals, and establishing institutions of learning. I care not whether it be done by the United States, or by the states severally; I am willing that the states nearly concerned should

have all that this bill in its original shape proposes, and as much more as this amendment will give them; and I anticipate that at the expiration of this half century it will be seen that this very policy, so much opposed—of appropriating public lands to the construction of railroads—will be found to have been of more beneficial and benign operation upon the wealth and prosperity of the whole people, and upon the bond of union itself, than the system which has been pursued heretofore, beneficent as I admit that that system has been. I am sure, therefore, the honorable senators who are in favor of the passage of the original bill will find it aided by the amendment proposed; for there are many in Congress who agree in the sentiments I have expressed, and I think those sentiments are becoming common in some portions of the Union.

With regard to the merits of the improvement specified in the amendment to the bill, it will certainly be one of vast importance in connecting Louisville with St. Louis. It will be beneficent in its operation to all the southern states, and especially to the city of New Orleans.

In reply to my honorable friend from Wisconsin, [Mr. Walker] who seems to intimate that the construction of railroads across the parallels of latitude through the western and the southern states will tend to revolutionize the commerce of the country, I may say that I feel as deep an interest in the stability of the present channels and courses of commerce as any one, nevertheless I am willing to incur all the hazard of constructing the roads now under consideration. I have found that the more roads and canals were made in any part of the United States, the more the whole country prospered. You may make railroads anywhere, they will practically terminate in one centre, and swell the wealth, the prosperity, and the advancement of the great commercial metropolis of the Union. Her position is assured. She knows no fear, and indulges no jealousy.

I have no difficulty about the constitutional power of the government of the United States to make works of national improvement—to construct roads of any kind which shall serve for great national objects. I can conceive of no public improvements more obviously adapted to promote the welfare and prosperity of the country, or more indispensable to the security of the United States, than a railroad from Lake Michigan to the junction of the Ohio

and Mississippi rivers. I think also that the government of the United States has a discretion as to the manner in which it will accomplish, or aid in accomplishing, such an object, and as to the funds which shall be devoted to that purpose. Then the question before us, so far as the principle is concerned, resolves itself into this: whether, this being a work of such a national character, productive of national benefits, it is one which is entitled to special consideration on the part of government now. I think it is entitled to very special consideration, which will appear from examining the particular condition of the new states as contrasted with the old ones. The old states of Massachusetts, Connecticut, New York, Pennsylvania, Virginia, the Carolinas, and Georgia, were all the owners of the public domain within their limits. When it was desirable for them to construct public works, they were always able to appropriate public lands or funds arising from the sold lands, or at least the taxes derived from the lands within their limits. The consequence has been that all the old states, having themselves very considerable resources, have constructed, directly or indirectly, very important public thoroughfares, useful and beneficial to commerce, and particularly to travel, and to the wealth, prosperity, and advancement of the whole country. But they have never been made by mere individual, unassisted enterprise, without having been attended by very great delay and embarrassment. A great and extensive country like this has need of roads and canals earlier than there is an accumulation of private capital within the states to construct them; and so an examination of the history of the old states would show that the government of the states has lent or given its aid, directly or indirectly, to assist individuals or corporations in the construction of these great public works which are now so productive, either to the state or to the individuals by whom, in associated companies, they are owned.

There are many curious facts connected with the history of the internal-improvement system in the older states. Whoever will look into the statute-book of the colony of New York, will be struck with the beginning of the great system of canals and roads, which are now partially constructed, and when completed will connect the port of New York with the Pacific ocean. He will find, that in the time of Queen Anne the assembly of the colony

of New York appropriated $800 to John Smith, or some other person, for the purpose of enabling him to construct a public road, leading from New York to the West; and the appropriation was coupled with the condition, that within two years from the time of the passage of the act, the beneficiaries should have constructed a road wide enough for two carriages to pass from Nyack, on the Hudson river, to Sterling Iron Works, a distance of about twenty miles; and should have cut away the limbs of the trees, so high up as to allow a carriage, with a calash top, to pass. That was the commencement of the internal-improvement system in the state of New York; which, after the lapse of more than one hundred and twenty years, has proceeded no further yet than to complete the Erie canal, and to open two railroads—one of which is completed, and the other nearly so—from New York to the mouth of Lake Erie. I regard this work, which is now under consideration here, as an extension of that system, and the whole as constituting a great national enterprise—a great national thoroughfare. With me, then, the question is, whether it is wise and expedient to devote the public lands for the accomplishment of this purpose; and if so, whether it is necessary for the public interest that this road should be made earlier than it would otherwise be by private capital. Now, if it be true, as I have said, that all the old states, owning lands within their borders, and having unlimited power to tax, have still found it difficult and embarrassing to prosecute these improvements, then it seems to me the case of new states is essentially harder, and more entitled to the consideration of the government; for it happens that these new states are founded upon territory belonging to the United States: the United States own the lands, and the government of the states cannot appropriate them. The government of the United States owns the lands, and they cannot be taxed except so far as they are sold; and these new members of the confederacy are tributaries to the federal government, deprived of the resources which the older states have enjoyed for the purpose of completing their public works. I think, therefore, that the government owes it to itself, and to the states, to make liberal, and at the same time judicious appropriations, to extend its net-work of railroads and canals over these new regions, where the people and the government are unable to construct the work themselves. And, if there were any apparent fallacy in this argument, I think I should never-

theless be convinced of its soundness, by the fact, that all the new states which have undertaken to construct these necessary thoroughfares—necessary not only for themselves, but for the whole country—necessary for the welfare and prosperity, and even for the existence of the Union—have all found themselves embarrassed and crippled, and many of them rendered bankrupt, by the attempt to accomplish objects which they were unable to accomplish, and which the federal government had ample power to carry into effect. It is thus that the character of the states has been affected. It is thus that the morality of the governments of the states has been impeached; and it has been done in the manner I have indicated, for the reason that it was devolved upon the governments of the states to make works of internal improvement, while the resources which were applicable to that object belonged altogether to the federal government.

Now, I do not know, but I trust that the day is far distant when we shall have occasion for any road for the purpose of military defence; but we can all see that the time may come, and we know not how soon it may be, when this and all our public roads may be required for military purposes. And if it be right in time of peace to prepare for war, then it is right to make these appropriations, which are, after all, most effective securities for peace by preventing war, and are most indispensable works of defence in case of actual war.

I hear it said that the government of the United States is a trustee. I do not find that the United States are even called by that title, or described as a trustee in regard to this property. It is indeed true, that in one sense, a general sense, the government is a trustee over these public lands; but in no other sense than that they are trustees of the exercise of their responsibilities of governing. It seems to be supposed that they are fiduciary trustees, that they have pecuniary trusts, and that their trusts consist in holding these lands until they can sell them at a certain price, and then selling at this price, and then by some process to make, as nearly as possible, an equal distribution of the avails among all the people of the United States, thus securing an equal individual benefit in the land to each individual citizen. Now, sir, I find no such limitation of the general powers of government, of the broad powers of the government over this domain. It is a power to hold it, a power to use it, a power to dispose of it, and to dispose

of it without any limitations prescribed upon our discretion. And then it is, like every other power of the government, to be exercised with judgment, wisdom, and a due regard to the best interests of the country. What, then, is the best and highest interests of the people of the United States in regard to this domain? It is not to derive from it the highest amount of current revenue; it is not to accumulate in our coffers the highest and greatest amount of avails in the sales of the public lands which is attainable. But it is to bring them into cultivation and settlement in the shortest space of time, and under the most favorable auspices. And why is this the best interest of the government? It is because the power of the government is increased just in proportion as population is extended over what now constitutes the public domain, and that the wealth of the government increases in the same ratio as the increase of population, and that the taxable ability of the people for purposes of peace and war is increased by the extension of the population and by the increase of wealth. I can conceive it possible that it is more profitable, more conducive to the interests of the people of the United States, even in a fiscal or purely financial point of view, to make large appropriations from this domain for the purpose of enhancing their more speedy settlement, than it would be to retain them in a miserly grasp for the mere purpose of revenue. It is therefore upon the ground that the most expedient and beneficial disposition of this portion of the public lands is to devote it to the construction of public roads beneficial to all the people of the United States, as well as to the states which are immediately traversed by it, that I am in favor of the principle of this bill, and of all similar bills which are properly guarded in their provisions, and shall give them my most cordial and effective support. I hope that the bill will be passed.

THE PATENT LAWS.

MAY 24, 1850.

I AM quite satisfied, Mr. President, that if this bill should be passed in its present shape, it would defeat the purpose of the committee by whom it has been reported; that it would subvert the patent jurisprudence of the country, and practically abolish the legislation which has been matured through a period of sixty years for carrying out that beneficent provision of the Constitution which authorizes Congress "to provide for the encouragement of the useful arts by securing to inventors the benefit of their discoveries for a term of years." Nevertheless, I do not think it at all singular that the provisions of the bill are found, as with due deference I think they are, crude and unsatisfactory. This arises, there is no doubt, from the peculiar delicacy and the peculiar difficulty of all legislation and of all adjudication touching this important subject.

It has been said by very high authority, and has been admitted by every judge and every jurist who has had occasion to administer the law of patents, that it constituted the metaphysics of legal science. This difficulty arises chiefly from the circumstance that it is easier for even a plain and unlettered man to invent a useful machine, or composition, or preparation of matter, than it is for him, or even the most scientific philosopher, to describe the invention he has made with such accuracy and precision as to distinguish it from other things that were known before, and thus point out what was old, and not the object of protection, and that which is new, and therefore the object of the care of the government.

The experience in Great Britain on this subject, from the time when patents received the favor of Parliament under James I. down to 1836, was an experience of continual and perpetual dis-

appointment of the policy of the government in fostering invention. The greatest and most useful inventions in that country were those which were continually defeated by reason of the application of technical rules and principles in the construction of patents. Arkwright's great invention, certainly one of the most beneficent inventions of any age, was lost to him for that reason.

The same experience was encountered in the United States until the same period; and I believe it was a very general sentiment that the system of patent jurisprudence had signally failed. Shortly before that time a decision was made by Mr. Justice Thompson, at the Circuit, which was afterward affirmed by the Supreme Court of the United States, which permitted the amendment of letters patent by the correction of the specification when it was insufficient upon judicial investigation. The same principle was adopted in England in 1836, and in that way it was incorporated into the legislation of both countries. This is the law, as it now stands, for the reissue of letters patent.

About the same period a change came over the disposition and temper of judicial authorities in England and in the United States. Instead of encouraging technical objections to the defeat of meritorious patents, they have in both countries, since the date I have mentioned, adopted the principle of sustaining patents, as far as it could be done by liberal and fair interpretation. Nevertheless, I have had some little experience for some years in the professional duties relating to this subject; and that experience has left upon my mind this general conviction: that a worthless patent is never invaded; that of good patents, five out of eight are rendered worthless and unavailing by litigation; that there is no highly valuable patent which can reward the inventor within the term of fourteen years, because of the ruinous delays and expenses of litigation in maintaining it; and that, therefore, an extension of such patents becomes unavoidable to carry into effect the just policy of the government, while such extensions always operate harshly and severely in continuing a monopoly which is felt with much reason to be oppressive upon competitors in the arts.

Under these circumstances we have all seen—everybody has seen—that it would be desirable to modify our judicial system so that we should have but one proceeding whereby to test the valid-

ity of letters patent, and thus quiet the title of the inventor. The *scire facias* has been supposed to be a fit proceeding for that purpose. But its adoption in the shape presented by the present bill would be attended with this difficulty—that while the patentee stands alone, he is opposed by combinations of all the infringers of his patent throughout the United States. He cannot maintain his title and secure just protection for his property without incurring the expense and the delay of litigation with the infringer in all the judicial districts of the thirty states; and the *scire facias* being a remedy available to the same infringers, in the same courts, it would be resorted to by them throughout all the same judicial districts, and thus double litigation already ruinous. In other words, the patentee prosecutes now, as plaintiff, the infringers throughout the United States at ruinous cost and expense. Pass this bill, and give the defendants severally a *scire facias*, and they would bring suits against him as numerous as those he is now maintaining against them. The consequence would be that patents which are now unprofitable, by reason of excessive hazards and losses of litigation, would be rendered tenfold more worthless by the increase of that litigation. And if we can so modify the system that the litigation shall be arrested and confined to a single issue, in which all parties may participate, and which shall be confined to one place, we shall perhaps secure the objects we all have in view. Whether this can be done or not, is a question which ought to engage the attention of the committee if the bill should be recommitted, as I trust it may be.

With a view to justify my own vote against this bill in its present shape, or my vote for recommitting it for further consideration, I have drawn up an amendment, which I do not claim to be perfect or complete, but which will suggest certain considerations to the attention of the committee. I propose, then, to insert at the close of the sixth section these words:

"But only one such proceeding for the repeal of letters patent shall be pending at one time; and until the letters patent shall have been judicially repealed, they shall be held conclusive evidence in all cases of the question of the originality of the invention therein described."

My object is to suggest the institution of one judicial proceeding or trial to determine the validity of any one patent. This will give the patentee only one place at which to appear for the maintenance of his rights; and the bill should be so amended as to summon and invite all persons opposing the patent to appear

and arrest it if they can, and until it should be arrested the letters patent should be deemed to convey and assure to the inventor just that title which they import on their face—the exclusive use of the invention.

It is right that they should have this under our present system of patent legislation, if it be honestly and effectually administered, because it prohibits the granting of any letters patent until it has been ascertained by the government itself, upon due examination, and under the highest responsibilities, that the invention claimed is truly original on the part of the applicant. The object should be to make the title absolute until it is repealed, and to make it absolutely void when it has been repealed. I am aware, as I have already said, of the difficulty which attends this subject. I am by no means willing to say that this amendment is practicable in all respects, or that it would obviate the difficulties complained of; but if it shall suggest for consideration the points which I have indicated, it will effect the purpose for which it is submitted.

PEON SLAVERY.*

JUNE 6, 1850.

I SHALL with great cheerfulness and pleasure record my vote in favor of the original proposition to abolish peon slavery. As it was said by the honorable Senator from Kentucky, [Mr. CLAY] we have been six months here engaged in endeavoring to admit California, and I have spent all the days of those six months endeavoring to arrest African slavery. Failing in that, to my profound regret, I do not think it ought to be unworthy of our care to prevent the enslaving of Indians or of any other class or caste of men. We are told that we know nothing or not enough about this peon slavery to legislate upon it. Sir, we have known enough to subvert the constitution of New Mexico and to undertake to give it another, and to subvert the constitution of Utah and to

* Remarks, during the debate on the Compromise Bill, on a proposition to abolish peon slavery.

attempt to give it another; and we know, therefore, that we ought to understand the systems which have prevailed there, and the systems which ought to be substituted, if any, in their place. Now, we know this in regard to peon servitude—that it is SLAVERY, and that it is slavery that is created there either by law or by contract. If it is created by law, and without the consent and will of the slave, then it is void, or ought to be, and ought to be abolished. If it be created there by contract, then, sir, I have nevertheless no difficulty in regard to the proposition; for I hold this truth to be self-evident, that "all men are created equal," and that they have inalienable rights, and that among those rights is LIBERTY.

THE COMPROMISE BILL.

JUNE 13, 1850.

I SHALL vote to strike out, and for this amongst other reasons: that I hold the whole bill most unfortunate in its conception, most injurious in its operations thus far, and tending to most unhappy results.

The bill has brought the business of the Senate and of the country to a dead stand-still. After the lapse of six long months, California is yet at the bar of the Senate waiting admission; whereas, if she had been indulged in the separate consideration of her claim to which she was entitled, she would have been admitted long ago.

If the motion to strike out shall prevail, I think it will strike out one very cogent reason from the argument in favor of the bill; that is, the earnest desire of Texas for the territory lying west of the Nueces, and northward, up to a point twenty miles within the ancient line of the province of New Mexico.

It would be attended by another consequence. I cannot exactly measure that consequence without knowing what is the amount which we are to pay to Texas to buy our peace at her hands, in addition to the district about twenty miles broad, along the whole southern border of the province of New Mexico. That sum may be one million, it may be two millions, it may be five, it may be even fifteen millions of dollars. If it be fifteen millions of dollars,

I think we shall strike out fifteen millions of sympathies and desires which are engaged in influencing the action of the country in favor of this bill—a bill which might be properly called "an act to hinder, delay, and defeat the admission of California," and to deprive New Mexico not only of a portion of her territory, but also to involve that territory in the surrender of the constitution which she brought into this country from Mexico—a constitution of impartial freedom, as opposed to slavery.

Now, what reason is given for this? The reason assigned is, that it would be better to surrender twenty miles along the southern border of New Mexico to Texas, together with all the country lying between the Nueces and the lower Rio Grande, and thus to save what would remain of New Mexico, than to leave the whole to be wrested from us by Texas.

Sir, I apprehend that Texas will, in the end, get just exactly so much of New Mexico as she is entitled to and no more; and I think, for one, that that is just no portion at all. It is true, that Texas is reported to us as having sent an agent to hold and so as having held an election in the territory of New Mexico, or in that part of it which it is proposed now to bestow upon Texas by this bill. What was the election for? Nobody tells us. What magistrate or other officer was to be elected? Nobody answers. But it was an election. Was it, then, a legal one, a constitutional one, one conducted in due form, by competent electors? Still we have no information. All that is vouchsafed to us is that there was an election, and seven hundred votes were given. Manifestly, then, it was an election got up by Texas for the purpose of effect, in aid of the claim of Texas to the territory where it was held. The election, then, is only a proof of an aggression by Texas, of an invasion, a usurpation. The announcement of such an event invites Congress not to surrender the territory invaded and usurped, but to protect and defend it.

Well, it is said that this is the easiest way to protect and defend it; that is to say, to protect and defend it by giving it up. I think differently, sir. I think if this bill were withdrawn, it would be perfectly easy for Congress, by a separate act, in accordance with the recommendation of the President of the United States on this very subject, either to draw the line between Texas and New Mexico, or to provide for the adjustment of this boundary by com-

missioners, or to refer the subject to the Supreme Court of the United States.

I am surprised to hear that the government of the United States is thought so feeble that it cannot protect New Mexico in its rights. The reason assigned is, that although New Mexico has magistrates or alcaldes, there is no political government in or over New Mexico, which is capable of maintaining and defending its rights. Sir, there is a political government over New Mexico, which is bound to maintain and defend its rights, and New Mexico has vehemently appealed to that government to do its duty. That government is the United States itself. That duty is the same, whether we regard the title or interest of New Mexico as paramount, or whether we regard New Mexico as a mere dependency of the United States. The matter comes back in both cases to precisely the same thing. Yet it is proposed that the United States, with Congress in session, with its legislative powers in actual operation, and with the civil and military powers of the government in full vigor, shall surrender at discretion to the first act of usurpation committed by one of the states of the Union, upon an unorganized portion of the territory of the United States.

Sir, if such a precedent shall be adopted, I know not what other measure would have so pernicious a tendency. It is nothing less than to invite aggression, to point out the way to anarchy, to instruct the members how to rend the central power in pieces.

Sir, I should prefer any other way to settle this difficulty rather than this. Before I consent to it, I want to know the ground upon which the claim of Texas rests. The claim extends to the forty-second parallel of north latitude. Now, to say nothing of the country on the lower Rio Grande, it is absolutely certain that in regard to the whole country above El Paso, and up to the forty-second parallel, it was always included in the province of New Mexico, or in that and other provinces in the republic of Mexico, and never in the province or state of Texas, nor was Texan authority ever exercised in it, or pretended to be exercised in it, before the election last year, which is made so conspicuous on this occasion.

If that territory now belongs to Texas, she must have got it from somebody, she must have got it somehow, she must have got it at some time. I have sat here, willing to hear and learn from whom Texas got it, and in what way. She produces no treaty

conveying it to her, no deed or other muniment of title. She shows no act of conquest over it. But, on the contrary, the whole region was found exclusively in the possession of Mexico by the United States, and was conquered from her by the United States. Texas claims it now, because she asserted a claim before the war, but did not conquer it. I hold it to belong to the United States, because the United States found it in the possession of Mexico, and conquered it, and bought it. Texas picks out, not from our statute books, but from messages, reports, and other executive documents, here and there an expression that she construes in support of her claim. This is balanced, on the other hand, by her own oblivion of her claim, and by other executive proceedings and documents equally conclusive against the implication. This argument of estoppel is one that can never be set up against New Mexico, even if it could be set up against the United States, which acts as a trustee for the people of the United States. I cannot consent, therefore, to buy from Texas, because she has no title, and her claim seems to me to be groundless. I say all this with no disrespect or unkindness toward the State of Texas, with no desire to do her injustice. I cherish for her the same regard and the same solicitude that I do for any other state in this Union. So far from indulging antipathy or hostility to that state, I regard Texas as fully, clearly, and justly entitled to all the money that is likely to be awarded to her by this bill. I hold the obligations of contracts made by the states upon just consideration, concerning legitimate subjects of contract, to be sacred and inviolable. Upon that ground, I hold that Texas owes to her creditors all the money that she borrowed in her war of independence. I hold that the United States, by extending her sovereignty over her, and thus protecting her against her creditors, became liable in justice and in equity to pay that debt. I hold this to be so, notwithstanding the agreement between the United States and Texas, that the United States should not pay the debt. The creditors were not parties to that agreement. It was known, or might have been known at that time, that Texas could not pay the debt, and that it must go unpaid unless the United States should discharge it. The agreement itself, then, was an act of flagrant injustice and repudiation. Now, sir, while I will not give one dollar, nor one cent, to a state of this Union to buy her off from encroaching on the territory of a prostrate, helpless, and conquered enemy, whom it is our duty to pro-

tect and defend by other means, I would pay to save the faith of any state, and the faith and honor of the United States, as much and as cheerfully as he that shall go the furthest in that way. I regret only, and I think the senators from Texas, in the further progress of this question, will find occasion to regret, that they have betrayed distrust of the justice of Congress, by putting their claim upon a basis which will not combine all who would give it their support, while the basis is indefensible in itself.

[In reply to Mr. CLAY, Mr. SEWARD said:]

I regret very much that the few remarks I felt it my duty to make have rendered it necessary, in the opinion of the honorable and distinguished Senator from Kentucky, that he should reply now, in the delicate condition of health which is so apparent. No one here sympathizes with him more deeply; no one of his numerous friends anywhere sympathizes with him, and with the country, more deeply than I do in everything that affects his health, his happiness, his repose, and his fame. It is however, a privilege which he exercises for himself to examine subjects for himself. It is a duty which he has taught me, to perform my duties by the guidance of my own judgment, endeavoring more to be right than to agree with any other man or men, and even with himself.

I was not aware that I spoke in language of complaint—I certainly did not in language of reproach. I expressed my opinion of the result of the measures which had been adopted on the suggestions of the committee, which result was, that the public business was brought to a dead stand-still.

The public business is practically at a stand-still. We have arrived near to that limit which generally bounds the longer session of the Congress of the United States. We are, moreover, at the verge of the fiscal year, when new appropriations must be made to keep the government in motion, and yet everything remains undone and almost unattempted. This embarrassment has resulted from some error or from some misfortune, I do not say which.

I have thought that the great and leading measure of the session was the one commended to us in the most earnest manner by the President of the United States—the admission of California. Taking that measure, together with the other suggestions in the message, and other propositions brought forward by committees as the leading measures, the business of the session remains unfinished, and there are no immediate indications of a change. This

extraordinary state of things has happened from some cause and in some way. Now, there is a regular and customary mode of legislation. It consists in doing one thing at one time and on one occasion. The same principle prevails in judicial administration. If a majority of a court should insist upon taking up the whole calender of cases at once; swearing all the witnesses at once; taking all the evidence in all the causes at once; hearing all the counsel for all the parties at once, and sending all the cases to the jury at once, instructing them to bring in one general verdict of compromise or adjustment of the whole, and if they should encounter delays and embarrassment, I think they would have little reason to complain of the minority of the bench who should have remonstrated against so extraordinary a proceeding. Now, sir, I think sound legislation just as wisely and as necessarily inhibits multifariousness of subjects and confusion of measures as judicial administration does multifariousness of issues and confusion of parties. I must beg leave, therefore, with the utmost deference to the committee, to submit to the country the departure from accustomed modes of legislation which has occurred, as involving the real cause which has arrested public business. If there is to be a question of responsibility, it will be awarded to those who, being a majority, have exercised power; and not to the minority, who have constantly, though vainly, endeavored to bring back the Senate to the customary mode of transacting business. If I am asked, as indeed I am, how this departure here operates upon the other House, I reply that the two Houses are not so far apart but that a course of action in one House, favoring or opposing action in the other, may be adopted. I cannot consent to the passage of this bill for the purpose of obtaining the admission of California, because it involves sacrifices of other measures which I cannot consent to make.

Sir, a majority of this Senate have determined that they will bring into one bill various propositions upon which it is known, and must be known, that Senators must disagree, and that there must be division of opinion not only, but many lines of division. The consequence is, that if we vote for the bill to obtain the measures that we approve, we must vote also for measures which our judgments condemn; and if we vote against the bill on account of measures which we disapprove, we must sacrifice others which we desire to see prevail.

Now, sir, it is this course of legislation to which I object. It is for this reason that I shall vote to strike out every feature of the bill, as fast as they are proposed. If we cannot break the bill down by a common opposition, I am willing to take it to pieces joint by joint, limb by limb; and I am ready to do so, because he who requires me to vote for measures which I disapprove by combining them with those which I do approve, seeks to control my judgment by coercion; and he who surrenders to a combination which is intended to have this effect, surrenders a part of his rights. For my part, I never will consent to any such surrender; and I am very sure that I never should engage in any such conspiracy against others.

THE COMPROMISE BILL.*

JULY 25, 1852.

I suppose we are to understand that the proposed commission is to make an honest and just award upon the rights of the respective parties to the territoriy in question—not a partial, biased, or corrupt one, but a true, just, and fair award. Congress certainly would not offer Texas a proposition for a commission to proceed upon any other principle.

Now, then, assuming that this is to be the character of this commission, and this its design, I ask what is to be the effect of this proviso upon the state of the case committed to the commission for its consideration and adjudication? It is a recognition, an acknowledgment that Texas has rights in regard to this territory; that she has some rights there, (not defining what they are,) while the amendment is silent upon the rights to be reserved to the United States and to New Mexico. This amendment of the Senator from Texas leaves a strong implication against the United States and against New Mexico, and in favor of pretensions set up here in the Senate of the United States, and which have been

* Remarks on an amendment of the Compromise Bill, proposing a joint commission to be instituted by the United States and Texas, for settling the dispute of boundaries between Texas and New Mexico.

overruled here, and which the executive authority of the United States has refused to acknowledge. It will be in vain, after this commission shall have been appointed, to say that this proviso means nothing; that if Texas has acquired no rights since the treaty of Guadalupe Hidalgo, then that the proviso stipulates to reserve no rights. And why? Because Congress would not be presumed to use a form of expression which would be absurd. They will be deemed to have considered and determined that Texas has acquired, in some way, some rights since the execution of the treaty of Guadalupe Hidalgo. And, if they failed to define what her rights are, the commissioners themselves must undertake to determine what the rights she acquired subsequent to the treaty are. And when they come to examine these rights, they must, it seems to me, come to the conclusion that Congress assumes that Texas has acquired rights by extending her territory since that time.

Now, for myself, I believe that no action which has been taken by the state of Texas since that treaty; that no action which has been taken by any military or civil officer of the United States has affected that question in the slightest degree. I believe that the rights of the parties (New Mexico and Texas) remain precisely as they were at the time of the execution of that treaty, and cannot be changed. I have, in all the attention I have bestowed upon this subject, looked upon the supposed estoppels of the United States, by the action of the different functionaries of this government, partial as they were in their character, and limited in their authority, as having no bearing on this subject. But this commission will not be at liberty so to treat; and therefore they will come to the conclusion that Texas has acquired some rights.

Now, I say that if Texas has acquired any rights by any action of her own, then New Mexico has acquired rights by her action. If Texas, by taking possession of El Paso, by holding an election there, as is contended, has acquired any right in that region, then I hold that New Mexico, by holding a convention, and denying the jurisdiction of Texas, and establishing a constitution for herself, has equally acquired rights which are to be upheld against the pretensions of Texas. And again, if the action of the executive or military officers of the United States has given an advantage, then I insist, on the other hand, that the subsequent action of the government of the United States, in consenting to the erec-

tion of a provisional state government within the region of New Mexico, is to be taken as an act on the part of the United States disaffirming the right of Texas, and conceding to New Mexico her rights.

It is, therefore, that I am opposed to this amendment, not for what it contains, but for what it does not contain. It must be equal, before I can agree to adopt it. If the Congress of the United States come to the conclusion to give this whole territory of New Mexico to Texas, let it be done at once. I am willing to submit, the people of the United States will submit, to any decision that Congress may make on this question. Texas is the only party who refuses to submit. I want no delay in settling this question of boundary; I do not want to wait one, two, or three years for its settlement. I want no intervention of commissioners; I want no armistice; I want no war. I propose to have the matter settled in a constitutional way. Nobody here has resisted the settlement of this controversy between Texas and New Mexico. The only resistance that has been offered, has been resistance to the measure which was proposed; first, because it was connected with other questions, and other measures, to which it had no relation, and upon which it had an injurious tendency; and, in the second place, because the plan of settling it, proposed by the Committee of Thirteen, was supposed to be improper in itself.

Now, it appears that the latter objection was well taken. The plan which we have resisted has been abandoned and cast to the winds, and we have now another one submitted to us. This may obtain favor in the Senate; it might obtain favor in the House of Representatives. There would be much greater opportunity for settling this question directly, if it were separated from this bill. For myself, I have not the least desire to oppose any just claim of Texas. I believe that Texas has better claims upon the treasury of the United States, for the payment of her revolutionary debt, than she has for territory.

Sir, I am willing to meet this question. If I am overruled, I am willing to submit. I only insist that, if we establish this commission, we shall submit the case to the commissioners justly and fairly; and not make up the case for them. And now, what reason is there for excluding all affirmance of the right and title of New Mexico, and all affirmance of the right and title of the United States, and recognizing indirectly the rights of Texas? I

have heard no reason, except that Texas is armed for resistance against the United States. Then, I ask, whether it has come to this, that the state of Texas, by assuming an attitude of resistance to the authority of the United States, shall dictate to the Congress of the United States her own terms, her own time, her own extent of dominion, and her own extent of compensation or equivalent? I, for one, am not prepared to sanction any such proposition.

AMIN BEY.*

I THANK the honorable Senator who has recalled the incident of the visit of the ambassador who came with a present from the Imaum of Muscat. If I remember well, the ambassador was not in the roll of common men. He was a minister at home—a Secretary of State. I passed through the navy yard, at Brooklyn, with him. Among the objects of curiosity and interest there, I pointed his notice to an exquisite bust of Washington. He looked upon it thoughtfully, and inquired "who was Washington?" Shall we not instruct the Oriental nations in our arts and civilization? How shall we instruct them if we do not first win them to visit our shores? I think that the quality of hospitality, like the "quality of mercy,"

> "..... is twice blessed:
> It blesseth him that gives, and him that takes;
> 'Tis mightiest in the mightiest."

If we were seeking how such a nation as this might employ the small sum indicated in the most beneficial manner, I think we should find it in disseminating among the nations and the people of the East knowledge of the institutions, the arts and the history of the West—knowledge of the progress of human society. The Turk is a willing learner. Let us receive him with the rites of his own native hospitality.

* Remarks on a donation of $10,000 to Amin Bey, a commissioner from the Sultan of Turkey, the first diplomatic agent from that powor.

PRE-EMPTION PRIVILEGES TO EMIGRANTS.*

SEPTEMBER 17, 1850.

NOTE.—Mr. Mason moved to amend a pre-emption bill by striking out the words "and all persons who shall have made declaration to become citizens of the United States."

MR. PRESIDENT,—I shall vote against this amendment of the Senator from Virginia, as I am sure every senator would who might have taken the trouble to go into the western states and see how they are colonized. I shall refer to Wisconsin for illustration. I think it is now fifteen years since the state of Wisconsin, or what is now the state of Wisconsin, contained a population of only about five thousand souls, then organized as a territory, together with Iowa, under the care of the honorable Senator opposite, [Mr. DODGE] as its Governor. In the space of fifteen years, Wisconsin has grown to be a state, numbering four hundred thousand people, which is a population nearly equal to one-seventh part of the population of the greatest state in the Union. Any person who has visited that region cannot have failed to see that, in all which goes to constitute the elements of political strength and wealth, of moral and political power, it is worthy of being ranked among the most prosperous and happy communities in the world.

Now, sir, I think if a census were taken so as to discriminate between those of foreign birth, and those who are natives of the United States, there would be found among the whole population of Wisconsin one-half who by birth are foreigners, and who went upon the public domain as such. And yet I think no community on earth shows more of industry and thrift, and gives higher evidence of social improvement and of republican loyalty and patriotism. It is upon such observations as these that I have

* Remarks on admitting emigrants to privileges of pre-emption on the public domain.

adopted the conclusion, that the welfare of this country requires that the invitation, if I may call it so, should be freely extended to foreigners, and that the privilege should be allowed to them as well as to our own citizens to fill up the lands of the west, and that the more speedily they shall be so filled up the better.

MINING PRIVILEGES TO EMIGRANTS.*

SEPTEMBER 24, 1850.

I MOVE to amend the bill by adding after the word "citizen," in the second section, the words, "and persons who shall have, in pursuance of law, declared their intention to become such," so as to make the section read:

"That the said agents, each within his district, shall have authority to grant permits to American citizens [and persons who shall, in pursuance of law, have declared their intentions to become such] to work the placers on public land by manual labor, and also to work by mining and quarrying the mineral lodes or veins occurring in the work, by machinery driven by horse, steam, or water power, and every permit shall specify for which kind of mining it is granted."

I discover that this bill contemplates a restraining of its benefits to American citizens. The amendment I offer, proposes to extend them to those who shall have declared their intentions to become citizens, in the manner prescribed by law.

At this late stage of the session there is no time for discussing the principle involved in this amendment. That principle, however, was adopted in the bill for disposing of the public domain in Oregon, which was recently passed. I gave my reasons for adopting it on that occasion.

I will add now only this, that the objects of the United States in regard to the gold mines in California, should be, in the first place, to bring to the general public use of the people of the United States the largest possible acquisition of national wealth from their newly-discovered fountains; and, secondly, to render the mining operations conducive to the best and speediest possible settlement of our vast countries on the Pacific coast, which are so soon to exercise boundless commercial, social, and political influ-

* Remarks on admitting emigrants to the mines in California.

ences over the Eastern world. The pecuniary wealth and the political power thus to be obtained, will be obtained just in proportion to the number and assiduity of the persons who shall be engaged in working the mines of California. That number and that assiduity will be in exact proportion to the liberality of the terms upon which the mines shall be opened. It was on this ground that I voted against the proposition of my honorable friend from Ohio, [Mr. Ewing] which contemplated seniorage and revenue to the government from these mines, and in favor of the provision contained in the bill, which stipulates for nothing in the way of revenue, but enough to pay the expenses of regulating the operations in the mines. Moreover, distinctions between races and castes are vices in any constitution of government; and I venture to say, that if we now refuse to discriminate in California in favor of those who are already citizens and those who are in process of becoming so, we shall happily crush in the bud that principle of native Americanism which, if allowed to ripen, would there, as elsewhere, produce only bitter fruits.

I will say a few words in reply to one or two remarks of the honorable Senator from Georgia, [Mr. Dawson.] He asked whose were the lives that were sacrificed, and whose were the moneys that were expended in the conquest of California? I think I may venture to say that more than half of those lives were the lives of men born aliens from our commonwealth. It is certain that the commanding general, who closed that conquest with unexampled brilliancy, [General Scott] thought it his duty, in the very hour of triumph, in the Palace of the Aztecs, to declare to the world his high appreciation of the valor, and the American loyalty of the troops of foreign birth who had fought under his standard. The moneys expended were the treasure of the United States. It is precisely because that conquest has cost money and blood that I desire to make its achievement redound as much as is at all possible to the welfare and prosperity of the United States. I know that the way to attain that object is to engage the largest number of persons with the largest liberty in drawing forth the hidden treasures of the earth in California.

Again: I cannot see any difference between this case and the case of the public lands in Oregon, to which I have referred. The settler in Oregon cannot obtain land without going upon and actually occupying it; so the settler in California cannot obtain a

benefit from the mines without obtaining a permit and planting himself upon the rocks or the sands from which the gold is to be extracted. When he has done that, he is deriving the subterranean wealth from the soil; just as the farmer is deriving his gains from its surface. The policy is the same in both cases; it is to cover the earth with population as fast as possible, and to distribute the wealth acquired as broadly as possible.

But the honorable Senator from Georgia fears that foreigners admitted to these mines will extract the wealth and leave the country, carrying away the spoils. Sir, such as this has not been the history of this country or of any part of it. It is a country which invites foreigners by the exposure of new and virgin sources of wealth, and by the inducements of peace and of all political blessings. It has invited them for two hundred and fifty years past, and we are all here by reason of these inducements. Does any senator know an alien who has ever recorded a declaration of his intention to become an American citizen, and then turned back to his native allegiance?

But it is said by the honorable Senator from California, [Mr. Fremont] that the people of the countries bordering on California, and who would go from these countries to the mines, are of very doubtful character. But I beg leave to say to that honorable senator, that from the first hour that an American state or colony was planted here, it has been continually said of all foreigners who followed them, that they were of doubtful character. And yet it has happened that a period of five years has always been enough to dissipate these doubts and fears, and we are made up a whole homogeneous nation of such accessions. Some five years ago, when ascending one of the lakes, I went on board of a steamboat at Detroit, at night, and made my way through six hundred emigrants sleeping on the decks; they were all foreigners of doubtful character, and they constituted a population sufficient for a township. This was the freight of only one of half a dozen steamers equally burdened with just such doubtful foreigners. They are quietly dispersed through the West, and now they are all loyal American citizens. The only difference that I can see between a citizen by birth and one by adoption is, that the one was made a citizen by his ancestors, and the other by his own voluntary action.

The honorable Senator from California will excuse me for say-

ing, with the utmost deference to him and to the generous new state he represents, that I think that the legislature of that state, by making a discrimination between native citizens and foreigners, acted unwisely in regard to the permanent welfare, peace, happiness, and prosperity of the whole country. It is because I consider that provision detrimental to the interests of the state, and consequently to the interests of the whole republic, that I have offered this amendment for the purpose of repudiating the policy of exclusion of foreigners.

My honorable friend from Georgia [Mr. Dawson] will now permit me to say that I have never, here nor elsewhere, put the broad policy of naturalization which I advocate upon the ground merely of *charity*, or on the ground of *humanity*. These, indeed, are considerations which are by no means foreign to the question. I shall not deny that they have their weight in my judgment. *Nihil humanum puto alienum.* But I have advocated that policy here and elsewhere, because I regarded the interests of the whole American family as demanding the practice of not only the largest civil liberty, but also the opening of the door to the privileges of citizenship widely and freely to all who may desire to enter.

COMMERCE OF THE PACIFIC.

SEPTEMBER 28, 1850.

The argument in favor of striking out this portion proceeds upon two grounds—one that the United States have not as high a responsibility to discharge toward the mercantile marine as they have to discharge toward the national marine; and the other that it has not as much interest in the former as it has in the latter. Now, I understand it to be the duty of the United States to regulate commerce, and that the government is charged with the responsibility of providing all that is necessary for the repair of vessels on the Pacific, as well of the commercial as of the national marine. It certainly has as high an interest in it; for it connects itself immediately with the revenue of the country, upon which the government depends for its subsistence. If this be so, then it is right for

Congress—there being no other provision for the merchant marine —to open their dry dock for that purpose, especially if it can be done without serious inconvenience to the public marine. Now, we know the fact that there is no such provision there for the merchant marine; and is there any immediate prospect that there will be one made by private enterprise? No! What, then, will be the consequence of refusing the advantages of this dock to our merchant vessels? Not only our commerce on the Pacific coast, but our navigation to China also, will be deprived of the benefits growing out of such an establishment.

No one, I think, can deny that a dry dock at a navy yard is necessary, whenever one shall be required upon our Pacific coast. If it be begun now, it cannot be accomplished too soon, because no one can foresee the necessities of political events which will render it necessary. I assume, then, that a dry dock is to be built, and a navy yard to be built somewhere upon the Pacific coast. I think it is clear that it ought to be begun now. Then, the only consideration remaining is, whether there is anything to be saved by postponing this matter until another session of Congress. The economy, if there be any, must consist in getting better terms at another time. I know of no reason to suppose that that can be done. The delay will not be merely from this time until the commencement of the next session of Congress; but, by the experience we have all had, we know that it will be a delay until the end of the next session of Congress, because bills of this class never pass until just at the close of the session. It will, then, be a postponement of the commencement of this operation from now until next spring. We shall have lost nearly six months.

In regard to the location, in any event, that is to be determined by the Secretary of War. In regard to the estimates of construction, that, in any event, is to be determined by his discretion, and not by the discretion of Congress. This, then, refers to him now what must, in any event, be referred to him, and anticipates, if possible, the period when we may suffer for want of a dry dock upon the Pacific coast. I see no reason why the appropriation should not pass.

A MINT IN THE CITY OF NEW YORK.

MAY 24, 1850.

Certainly, I am of opinion, Mr. President, that it is very desirable there should be a branch mint in California, and that it should be established as speedily as possible. I have no doubt that a great loss is sustained by the youthful community rising there, which, struggling with so many embarrassments, can ill afford the loss resulting from the necessity of shipping bullion and gold dust to other parts of the world, for the purpose of coinage. I shall, therefore, be most happy on all occasions, after the state of California shall have become a member of this Union, or even before that time, while she remains a part of this empire, to vote for a branch mint, whenever a bill for that purpose shall come before the Senate.

The question of establishing a mint in Charleston, is one upon which my mind has not been engaged. I am not prepared to say that I would vote, or ought to vote, for the establishment of a mint at that place; but I am not prepared to say, on the other hand, that I ought not so to vote. I am not particularly informed at this time, of the state of mining operations in South Carolina, in Virginia, in Georgia, in Alabama, and elsewhere in the southern portion of the Union, without which knowledge my vote could not be given. But I submit to those who have offered these amendments, whether, if it be their object, as it undoubtedly is, to obtain the separate institutions which they propose, it is not as prudent and as wise—as it certainly is fair and just—to detach them from this bill, which may be overpowered by a combined opposition to the whole three measures, when at least one, and perhaps all of them, might, severally, obtain the favor of the Senate? I hope, therefore, that this bill may be put distinctly upon its own proper

merits. And I confess that the very learned and elaborate argument submitted to us some time ago, by the honorable Senator from Missouri, [Mr. BENTON] has so far fortified my own objections to the process of legislative "tacking," as to make me more unwilling than ever to combine several different and discordant propositions in one bill.

Mr. President, what is the necessity for a mint anywhere? It is for the sole purpose—or, at least, chiefly for the purpose—of saving our mercantile community, and, through them, the whole people, the loss and expense incident to the transportation of bullion to foreign mints, for the purpose of being coined, and thus converted into money, in which shape only the metal is adapted to the uses of commerce as a medium of exchange. The expense of assaying and coinage, is an expense which the government ought to bear, and ought to bear freely and fully. It is the duty of the government to perform the function of coinage for the citizen, because it assumes to furnish to the citizen the currency which he needs, while it excludes him from furnishing it himself. Our government undertakes to perform this function without seigniorage or charge—stipulating only, that the citizen shall supply the metal to be assayed and coined. Since the government has assumed it exclusively, they ought to perform it in that way which will be least expensive to the mercantile community, and which, of course, will devolve the least burden upon the country.

Now the commerce of this country and of this continent is concentrated in one port. It is there that money is to be used and employed; it is there that bullion and money are to be imported and exported; and it is there that coin, first and principally, is to be used as the medium of exchange of the productions of all countries and of all climes. Where, then, ought to be the mint which furnishes this medium of exchange? If anywhere, it ought to be as near as possible to the wharves from which it is to be exported, and where it is to be imported, and where the exchanges of which it is the agent are to be made. It ought to be there, instead of being, as it now is, at a distance of one hundred miles from the place where its functions are to be performed. Every argument which can be brought for maintaining that the mint of the chief commercial port of the Union should be located at a distance of one hundred miles from its wharves, would apply with equal justice and equal force in favor of transferring the seat

of the collection of the customs to the same distance. So that, according to this principle, we ought to have our custom-houses in Philadelphia for transacting the mercantile business of the city of New York.

The argument of the Senator from Maryland, [Mr. PEARCE] conceded the whole point, when he said that, if the question was in the first instance upon establishing a mint for the United States, the convenience of trade, he should think, would be a conclusive argument for locating it in the city of New York. And the argument of the Senator from Pennsylvania, [Mr. COOPER] brings us to precisely the same conclusion, when he says, that if a mint shall be established in New York, the institution in Philadelphia will expire, notwithstanding it is supported by the patronage and favor of the government, and all the commercial interests of that great and flourishing city. We are told, indeed, by the Senator from Maryland, that at most there can be but an expense of thirty thousand dollars a year to be saved to the mercantile community by the establishment of a mint at New York. I say, sir, with all due deference, that even that expense is more than the government has a right to impose upon the commercial community, inasmuch as the government has undertaken to furnish coin, and commerce requires that the expense of furnishing it should be made as small as possible. But who can tell us the amount of loss that is sustained by the exportation of bullion, and even unassayed gold dust, to Europe, to avoid the loss, risk, and delay, of transportation to and from Philadelphia for purposes of coinage?

Mr. President, let us meet a great question directly and justly. The mint was rightly established in Philadelphia. When it was established there, the commerce of the country was there. But now commerce has changed its haunts. The commerce of the country has concentrated, and the commerce of the world is concentrating, at New York. The government must accommodate itself to the change of times and of circumstances, or maintain a conflict in which it must be overborne. Sooner or later we shall come to this conclusion—the sooner, of course, the safer and more wise. I say nothing to the prejudice of Philadelphia, nothing in hostility to its interests or its commerce, or to the mint established there. Let it stand and perform all the functions required of it. But let us, at the same time, provide for the performance of those

same functions where they have become necessary, and even absolutely indispensable.

The communication which has just been read shows this extraordinary fact, that, owing to the failure of the mint at Philadelphia to coin the amount of bullion and foreign coin sent from New York to Philadelphia in proper time, the government has been obliged to resort to the expedient of sending an agent from Philadelphia to New York to pay off the amount of certificates given to merchants and bankers in that city for gold sent to be coined at Philadelphia; that is to say, that the mint in Philadelphia has been under the necessity of using the sub-treasury of the city of New York to pay out the coin collected there, and thus to relieve the pressure which has been created for want of sufficient coinage. I think that this circumstance alone shows the necessity and the great importance of establishing a mint in the city of New York.

But it has been asked, of what use and to whom is the use of establishing a branch mint in the city of New York? I answer that the expense, the loss, and the burden, which falls upon the community of New York, has been, at various times, not less than fifty thousand dollars a year for want of a mint in that city. But it is said that some of the gold which would be coined at that mint is extracted from the mines in California, and it is asked what would be the use of a mint in the city of New York? I answer, that the very same reason which dictates the necessity of a branch mint at California; the same necessity which would prescribe its establishment there, prescribes, with equal if not greater force, the necessity of establishing a branch mint in the city of New York. What is the necessity or object of a mint anywhere? It is to receive the gold which is uncoined, whether in bullion, or in ingots, or in foreign coin, and convert it into money, which will be received and passed by our mercantile operations into circulation in the country. Now, then, it appears that the gold which is extracted from the mines in California does not go into circulation without subjecting the miner to a loss of two dollars upon every ounce; and therefore it is apparent that, by the establishment of a mint there, the sum of two dollars upon every ounce of California gold is saved to the country. Now, take the other alternative. Ten times as much gold comes annually into this country by the way of the city of New York as has yet been received

from the mines of California. This is foreign gold, much of it foreign coin; and as it comes into the city of New York, so it goes back again, without being recoined, and it does not therefore enter into our circulation; and the reason is, that it cannot be circulated as money, because, not having received the stamp, the impression of the government, it is not practically circulating coin. It is a collection of coins from other countries, every piece of which has to be weighed every time it is received or paid out, precisely like the gold in California. The argument, therefore, which proves the necessity of establishing a branch mint at California, proves equally the necessity of the establishment of a branch mint in the city of New York; and the question in both cases is precisely the same; that is, whether, in California, you will establish a mint at the mines where the gold is gathered, or take it to a distance of a hundred miles: so, if you are to have a mint on the Atlantic coast, the question is, whether it should be at the point where the most gold is imported, or whether it should be a hundred miles from that point?

SENATORIAL TERM.*

FEBRUARY 7, 1851.

NOTE.—The credentials of Robert Rantoul, chosen by the Legislature of Massachusetts a senator for that state for the seat occupied by Robert C. Winthrop, under an appointment by the governor of that state, were presented; but Mr. Rantoul had not yet appeared to claim his seat. Mr. Winthrop retired from the Senate. But thereupon, Mr. DAVIS, of Massachusetts, offered the following resolution:

"*Resolved*—That a senator appointed by the executive of a state to fill a vacancy, is entitled to hold a seat until the Senate is satisfied that a successor is elected and has accepted the office. *Provided*—That such election and acceptance takes place during the session of the legislature held next after the vacancy occurs, and that such acceptance ought not to be inferred from the mere presentation to the Senate of the credentials of the newly-elected senator."

MR. PRESIDENT,—I find myself unable to vote for the resolution of the honorable Senator from Massachusetts, [Mr. DAVIS] in favor of which my feelings and wishes draw me. If this had been a new question, I should have concurred at once in the construction

* Remarks on the duration of the term of senators appointed by governors to fill vacancies.

of the constitution given by the honorable Senator from South Carolina, [Mr. Rhett] which, I think, is the literal exposition; but it is too late, I think, to review the construction which has been acquiesced in so long, and which was adopted so soon after the establishment of the government. Then, adopting the construction which has been given in the precedents heretofore established, that this seat was filled by the person appointed by the governor until the vacancy should be filled at the next session of the legislature, I cannot adopt the opinion that the terms employed in the constitution were designed to close the term of the person holding office by executive appointment on the *first day* of the session, or on the *first hour* of the session, or on the *last hour* of the *previous* recess of the legislature; because if we adopt a construction so artificial and so technical, it would follow that, unless the legislature should, on the very first day, or in the first hour, fill the vacancy, or at least make it the first act of their session to appoint a senator, the legislature would never afterward have the power to fill the vacancy. I think, therefore, that the construction given to that clause of the constitution by the honorable Chairman of the Judiciary Committee [Mr. Butler] is sound and correct, to wit, that the vacancy may be filled by the legislature at any time during its session.

Then, the question arises, what constitutes the act of filling the vacancy? It strikes me that the Chair has given a true exposition of that act. The legislature have a duty to discharge; they perform that duty by appointing a person to fill the vacancy. They are to be presumed to have ascertained the competency or the qualifications of the person whom they have selected. They are not to be presumed to have sent here a person constitutionally disqualified from accepting the trust; they are not to be presumed to have selected an alien, one who has not resided within the United States a constitutional length of time; they are not to be supposed to have appointed a man under the required age. But, on the other hand, it is due to the legislature, and due to the state, to suppose that they have ascertained that the person whom they have appointed was competent to discharge the trust. And I think further that it is our duty to presume that they have ascertained also the fact of his acceptance of the trust, for it is not to be supposed that any state would notify us of the appointment of the person who had refused to accept, or about whose acceptance

they entertained any question. I suppose, therefore, that a person who is appointed by a legislature is from the day of his appointment a senator in the Congress of the United States. I suppose that he is to be deemed and reputed as holding that office, and entitled to all its privileges. The time when he will accept it, the time when he will enter upon the discharge of the duties of the office, is a question for himself alone. He may never accept it; but the state has discharged its duty, and it remains with the state to take care that the vacancy shall be filled. It seems to me, therefore, that we ought to pass over the question of acceptance of the office; for if we wait for an acceptance, how shall we define what is to be an act of acceptance of this trust? There may be various forms in which a willingness to accept may be signified. An exercise of the franking privilege would imply a willingness to accept. If we wait for an actual acceptance, we ought to define what that acceptance shall be. After having examined the question with care, I have come to the conclusion that we ought to regard the state as having sent here a person qualified, and, therefore, that it has filled the vacancy which existed; and so I come to the conclusion that the temporary tenure of the senatorial office in this case has ended, and that the vacancy which it continued has been constitutionally filled. It may be that it will prove to have been imperfectly filled, but the legislative appointment is sufficient until it shall be found otherwise.

MAJ. GEN. WINFIELD SCOTT.*

FEBRUARY 12, 1851.

It is precisely for the reason that it is not a departure from what has heretofore obtained in this government, that I am in favor of this resolution, and it is precisely for the reason that occasion calls for it, that I wish to follow out the line of safe and well-timed precedents from the day when the independence of this country was declared until now. It has been the habit of Congress to award honors to soldiers who had distinguished them-

* Remarks on a resolution authorizing the President of the United States to confer the rank of Lieutenant General on Winfield Scott.

selves in the service of the country. The records of Congress show that its thanks were presented, sometimes on more than one occasion, to each of the distinguished generals of the revolutionary war. The records show that in every war in which we have been engaged, the public thanks have been awarded to soldiers and to seamen who have distinguished themselves in the military and naval service. The time has come when an acknowledgment of this kind is due to the most eminent hero of the late war with Mexico.

Senators here who oppose this resolution say that they are willing to adhere to the ancient course; that they are willing to vote thanks, willing to vote medals, willing to vote swords, but that they will not adopt the measure of voting a title, or the title of an office. Sir, the eminent captain who has been alluded to, has achieved a distinction heretofore unknown, unattained in the military service of this country. He carried the war successfully to the gates and to the palace of Mexico. He subdued the country and restored the relations of peace. Having achieved this great triumph of the national arms, he was suspended from his command, and the command of the army was devolved upon another soldier. He came home from Mexico under the implied censure of his government.

Mr. Foote, (interposing.) Will the honorable senator allow me to interrupt him for a few minutes, to allow me to suggest, if he is really a friend to the proposition, that he is pursuing a line of remark which must, more or less, impede the passage of the resolution?

Mr. Seward. I thank the honorable senator. I trust that no such consequence will follow. I suppose this Senate is capable of appreciating, and willing to appreciate, the circumstances which distinguish this case—which make it a distinct one by itself. Therefore, because of the peculiar brilliancy and glory of the achievements, and because of the peculiar circumstances in which that officer became involved afterwards, implying before the world some national injustice, it seems to me now to be eminently right and just to confer, not merely one of the ordinary tributes of honor, such as a resolution of thanks, a medal, or a sword, to this distinguished soldier, but the same thing, with some expression of the national sentiment, corresponding to the peculiar circumstances which require its manifestation. For that reason, I

find myself constrained to vote for the passage of this resolution. Nor can I see any injurious consequences that will arise from it. It is said, if we create the office now by brevet, it will be hereafter demanded of Congress to establish the office in fact. I believe the American people, instead of degenerating, are growing wiser and better every day; and we may safely trust to our successors to guard the public interests, public welfare, and public fame. Let us do what is just, and trust to posterity. They will do what they shall find just and wise. It is for these reasons I shall vote for the resolution.

I disclaim any attack upon the late administration. I pass over altogether the matter of the complaints against General Scott. I rest on the fact of his suspension from command alone. The Senate will perceive at once that I am sincere in this disclaimer, when I remind them that the complaints upon which General Scott was arraigned were complaints that did not arise here in the capital, or even in this country, but complaints that came up from his own camp in Mexico. They were entertained; and I do not say, I do not intend to intimate, that they were not necessarily and justly entertained. The distinguished individual who filled the office of Secretary of War under the administration which conducted the Mexican war, is one of the most eminent men in this country. He is one of my personal friends—a man for whom I cherish a very high regard, and to whom I would be the last under any circumstances to impute unnecessarily or wantonly even an error of judgment.

CHEAP POSTAGE.

FEBRUARY 18, 1851.

Note.—The question was on Mr. Seward's amendment, viz.:

"Strike out of the first section the words 'three cents when the postage upon such letter shall have been prepaid, and five cents when the postage thereon shall not have been,' and insert the words 'two cents to be in all cases' before the word 'prepaid.'"

Mr. President: I understand it to be the desire of the Committees on the Post-office, in both Houses of Congress, and the general desire of Congress itself, to give the country the benefit of a system of cheap postage. I have proposed the amendment

for the purpose of carrying that intention into effect. I do not believe the plan proposed by either committee would accomplish the object of cheap postage, certainly not the one proposed by the committee of the Senate, which proposes five cents postage on unpaid letters, and three cents on prepaid letters. The postage which has been adopted in Great Britain is cheap postage. It is a postage of two cents. The honorable Senator from New Jersey very properly drew the attention of the Senate to the fact that the amendment I proposed would have the effect of giving to the people of the United States of America a rate of postage as low as that which is given to the people of Great Britain. But the honorable senator thought it was impossible, for the reason, as he said, that the distances which the mails must be transported through this great empire so far exceeded those within the islands of Great Britain. But if the honorable senator had recurred to the fact of the increased means of cheapening transportation by lines of steamboats and railroads, he would have found that we are quite as able to afford to the people of this country cheap postage, so far as the expenses of transportation are concerned, as the government of Great Britain is able to afford a cheap postage to the inhabitants of the United Kingdom.

But there is another circumstance which I wish to notice. The payers of postage in this country, in proportion to the population, exceed in number, in a great degree, the payers of postage in Great Britain. If the honorable senator will take up the statistics of at least two of the United Kingdoms, or portions of the United Kingdom, he will find that there is an amazing proportion of the population who never transact any business that requires communication through the mail, and who, for want of ability to read or write, are unable to employ its facilities. The greater aggregate capacity of the American people for correspondence requires to be considered in connection with this subject. The system, however, in order to produce the desired result, must be be one which will reduce the expenses, so as to bring it within the reach of the great masses of the people, and I think a postage of two cents, while it will afford all the revenue required, will bring it completely within the reach, as far as possible, of every class of citizens.

But the honorable Senator from Connecticut [Mr. Smith] demands of me to say where I will find the resources to supply the

deficiency which must accrue. He shows that the department has estimated the deficiency which will arise, if the House bill shall pass, at $1,250,000 for the first year. He infers that a similar deficiency, or a greater one, must occur if the amendment I propose shall be adopted, and asks where shall we find the funds to supply this deficiency? I answer that we shall find them in the increase of postage resulting from the increased correspondence of the country consequent upon the reduction to so low a rate. It is quite immaterial to this government whether the Post-office Department runs in debt this year a million, or even two millions, and the next year a lesser sum, if in the end it shall be able to redeem itself, and pay for all deficiencies, as was done in the case of a former reduction. That, I think, will be the operation of it. I have little faith in the estimates of departments made up for occasions like this, because they are always made to accommodate a certain system. The estimates are made for the system, and not the system for the estimates.

But there is another source from which the deficiency will be supplied, in a large degree, and that is a retrenchment of the expenses of the Post-office Department. This retrenchment will consist, in the first place, of a reduction of the cost of transporting the mails of the United States. At this day the mails carry some seventy millions of letters per annum. Of these seventy millions of letters, twenty-two per cent. are dead letters, which pay no postage to the government. They constitute twenty-two hundredths of the expense of transportation, and the government loses all that sum. Then the government of the United States is transporting a vast bulk of paper not at all necessary for the purposes of correspondence. Of six hundred letters opened at the dead letter office, four hundred and fifty-eight were rated less than one quarter of an ounce under the present system, and only one hundred and forty-two over one-fourth of an ounce; while the present system allows you to include the greater weight of half an ounce, and to make up the weight by inclosing in the same envelope letters from the same or different writers to the same or different correspondents. Then, again, of six hundred letters transported through the mails, only forty-eight are written on the whole four sides of a sheet of paper; two hundred and ninety-nine are written on whole sheets with only one page of paper, and rarely the second, and one hundred and fifty-eight cover only half

a sheet; forty-eight are written only on three sides, and forty-seven are printed circulars. Now, it will be seen that the Post-office Department is carrying, in sealing-wax, and in envelopes, and in unwritten sheets of paper, a larger amount in weight than the whole correspondence of the country. Under the system which I have proposed, that expense will be retrenched.

Then look at the reduction which will be made in the expense of managing the Post-office Department. Look at the expense which is now incurred. Two letters are now delivered in the post-office, to be transmitted. The first duty of the post-master is to see that upon one is stamped five cents, and upon the other ten cents, and when a great many letters are received during the day, of course this is an immense labor. Then, when this mark has been placed upon the letters, there is still another fact to be expressed on the letter, that is, to distinguish whether the letter is paid or unpaid. When all that is done, the letter is ready for transmission. But then commences a system of accounts. Each letter is to be registered, and the postage on each letter to be recorded, and the discrimination of postage is to be registered in different columns, separating the paid from the unpaid, and those which pay five cents from those which pay ten. When this has been entered in the post-master's books, he has to make an account describing how many bundles he sends, with accurate details of the contents of each, and he sends as many bills as there are letters directed for different destinations. These bills enter into all the details of the letters, and are dispatched, not to the place of destination, but to distributing post-offices. When they arrive at the distributing offices, the envelopes are removed, the bills are entered, new bills are made, and the letters are again separated into other parcels; and the same system of complicated accounts is repeated before the letters are sent to their destination. When they arrive there, the bills are all to be opened, their contents recorded, and these accounts are to be sent from the receiving post-offices, and the distributing post-offices, and the delivering post-offices, to the department at Washington, and there a complicated system of entries is to be carried out in books, the number of which no man can tell—by human hands, the number of which is legion.

Sir, we shall reduce all these expenses, and render this a simple operation. If the amendment which I propose be agreed to, and

the other details which will be necessary, be adopted, when letters are received, there will be one simple stamp put upon them indicating the payment. The stamp may not say paid. It may be any label or sign which shall be authorized and sanctioned by the General Post-office. That stamp impressed on a letter, will convey all the information that is necessary, either for the post-office to which it is to be sent, or for the post-master in making up his accounts. He has nothing to do, but to add up the number of such stamps, and so the whole proceeding is reduced to a simple arithmetical calculation.

I have a word more to say on the subject of cheap postage, which is, that we shall find ourselves obliged to reduce the postage again, if we adopt either system now submitted to us by the committees of Congress. The people are entitled to cheap postage. They will have it, because it is their right. And it will turn out ultimately, that cheap postage will be the most profitable postage to the government. Every man can see that if, instead of making the postage, as it now stands, at five and ten cents at the time of the last reform, we had adopted the postage which is now proposed by either of these committees, the Post-office Department would have been richer, and the country would have been satisfied, and that there would have been no necessity now for the reformation which is proposed by the bill before us.

As to the argument that we may reduce the postage too low, I have nothing further to say in addition to what I have said, except that the argument which has been adduced against reducing postage to two cents, was adduced against reducing it to five and ten cents, but has been overruled by experience. The Government of the United States is intrusted with the carriage of letters for the accommodation of the community. Throughout nine-tenths of the United States, letters can be carried by individuals cheaper than the rates which are now proposed, if we would leave the business to private capital and private enterprise. I think it is the duty of the government to maintain this system, which is constitutionally enjoined upon us. But it is both right and necessary that the government should not exercise a monopoly at a higher rate than that at which the same service can be performed by individuals.

There is another view of the matter to which I will advert, and that is, that the Post-office Department is daily coming into com-

petition with another public carrier, which carries information and correspondence with ten thousand times greater dispatch and rapidity than the Post-office Department, even with the aid of steam. That is the electric telegraph. The telegraph is already becoming a profitable system of commercial business. As a system of conducting correspondence, its prices are becoming daily less and less, and the day is not distant when the telegraph will encroach upon the business of the mails, if we keep the postage at a higher rate than that which will be compensated for by the reduction of cost and time.

Having looked at this subject in these various phases, I have come to the conclusion that a uniform rate of postage of two cents throughout the whole of the United States, upon all letters, would be the most judicious, economical, and efficient system. I should also propose that this rate should be for letters weighing not more than one-quarter of an ounce, instead of adopting the half-ounce standard proposed by the committee. I think such a system would be found more satisfactory to the country, and more useful in all the departments of life. Therefore it is that I have submitted the amendment. To save time, I would say that if any gentleman wishes it, I am willing to put the postage on single letters at two and a half cents prepaid, and I am willing to provide a coin of that value, which would be a fractional part of the federal currency, and would enable us to supply the wants of the community in that respect, while it would make our postage charges correspond to the federal currency which we have in use.

I inadvertently omitted to remark on the objection of the Senator from New Jersey. He seems to think that we ought to have a credit system at the post-office; that there must be a distinction between prepayment and non-payment, because there are a class of letters for which it is necessary to make such a distinction. Now, I am unable to understand, and, of course, unable to appreciate the force of that objection. Every man who sends a letter through the post-office writes because he wants to write, because he has something to say; he writes upon his own business, or he writes upon the business of somebody else. If he writes on his own business, he ought to pay the postage. If he does not desire to serve his neighbor or his friend so much as to incur the expense of two cents, he does not want to write to him very much, and he will not write to him, and probably it would be as well that he

should not write to him. But I am told there would be this inconvenience: a person who should send a letter to another on his own business, and call for a reply, would subject his correspondent to the necessity of paying the postage. This objection will be obviated by the use of post-office stamps, when they shall have been brought into general use in this country as they are in England. A person writing a letter in such a case would have nothing to do but to take two stamps, and put one inside the letter, and another on the outside. The answer which would be returned to him would have impressed upon it the stamp which he enclosed. I am satisfied that we shall come to this system sooner or later, and whenever we do come to it, we shall find it to be the most perfect system.

[On the provisions in the bill discriminating between newspapers according to distances carried:]

I think all these propositions go to show the defect, the radical defect, in principle, of the provision adopted by the committee of the Senate; to show how much inferior it is to the simple system of newspaper postage proposed by the House of Representatives. It is very desirable that the action of the government should not operate injuriously to the country press. But while we are endeavoring to secure that object, there is a very important one that ought also to be regarded with great care. The House of Representatives have proposed this simple system, viz: that there shall be a charge on every newspaper weighing more than three ounces, one cent, and for each additional ounce or fraction of an ounce, one cent, no matter what distance, anywhere within the United States. Then the country press is favored and protected by a provision that no postage shall be charged on any newspaper mailed and delivered in the county where printed, and within thirty miles of the place where printed. This is simple, and it will be satisfactory; much more satisfactory to the country press than any of the propositions which have been made here. Now, in lieu of this system, which is cheap and simple, and it seems to me admirable in its design, the committee of the Senate have proposed to divide the distances, and to make a tariff upon newspapers proportional to the distance they are carried. In other words, it is to restore in the transportation of newspapers the very defect which we all agree should be struck out in the transportation of letters. Can any one tell me what is the reason why, if there is a

uniform charge for carrying letters all distances throughout the United States, there should be several charges for carrying newspapers different distances within the United States? The policy which dictates that course is incomprehensible to me. On the other hand, if there be any policy at all in it, it is in favor of discriminating between letters, and abolishing or abandoning any discrimination between newspapers in regard to distance. Letters are business transactions in which the public have but very little interest. They are commercial transactions, and those who send and receive them do so for gain. The public, as I have said, have very little interest in the transmission of them. But a newspaper is a vehicle of intelligence, and a vehicle of political interest which ought to travel as freely as possible. And, therefore, it is that, from the beginning of the government to the present day, newspapers have never been obliged to pay the government the expense of their transportation, but the postage they have paid has been very small, just compensating the post-masters for the trouble of delivering them, leaving upon the government itself or upon the letters carried by the mail, the great proportion of the burden of the expense of transportation.

Again, if the ingenuity of a statesman could be taxed to denationalize this Union, he could not provide a system tending to it more directly than to break up the distance within which newspapers shall be carried at the same rate; to say that it shall cost the citizens of California $1.25 a year to receive a daily paper from the seat of government, while it shall cost a citizen of Baltimore only ten or twenty cents a year; and so again, to say the reverse, that the Government of the United States shall be denied the information which would be given by newspapers from distant states, because these newspapers could not bear the cost of transportation. This bill very ingeniously adopts a tariff which will limit the circulation of the papers in the eastern states to the Atlantic coast, and the circulation of the papers published on the Pacific coast to the borders of the Pacific ocean, and which will confine the papers of Alabama and South Carolina to their borders, or nearly so, and the papers of New Hampshire and Maine to their borders. What is the object? These newspapers are the political lungs of the republic. They ought to have free play. They ought to play vigorously, and therefore they ought to be kept in health. But, sir, the effect of this whole system, in my

opinion, will be to make such discriminations between them, that we shall be divided and classified into states and communities destitute of the means of maintaining communication and sympathy with each other. I therefore hope none of these amendments will prevail, and that we may see the expediency of leaving this subject in the shape recommended to us by the bill of the House of Representatives.

REVENUES OF CALIFORNIA.*

FEBRUARY 25, 1851.

As to the consideration upon which this money is to be paid to California, I think there is no ground to apprehend a mistake, whatever may be the declarations of the representative of California as to that consideration. The bill appropriates three hundred thousand dollars from a certain fund, directing it to be applied to the payment of the expenses of the state of California prior to her admission into the Union. If California expects this money at all, it is upon that ground; and, in the act of receiving it, she acquits the government of the United States to that extent; and so you have the voucher which the honorable Senator from Ohio desires; you have the voucher furnished in the language of the bill—in the act of acceptance. The honorable senator wants evidence; he wants the claim submitted to a committee. Does it make any difference as to what committee it is submitted, provided that it passes the ordeal of some committee, and that the bill is reported to the Senate by them? And no matter what committee might have examined this subject, would the Senate vote an appropriation any the sooner because it had been reported upon favorably by a committee? It is the merit of the proposition itself which must control their decision. Then the only question is, whether California has incurred expenses equal to this amount in maintaining a government for herself previous to the recognition of the state as a member of the Union. Upon this subject I think the honorable Senator from Ohio can have no

* Remarks on surrendering to California the customs collected there during the Mexican war.

doubt. There can be no doubt that the state of California was left without a government, in a state of anarchy, and that she was obliged to furnish a government for herself. She did it at a vast expense. In leaving her in this condition so long—we voluntarily did so, to be sure, but still we committed a breach of our treaty with Mexico—a breach of our treaty with California; for we were bound to protect and defend her against foreign enemies and against domestic dangers. We neglected to do so. She provided the government for herself. It cost her the amount of at least three hundred thousand dollars. The money which, if not in her possession, is the fund over which she asserts the claim, is now to be placed in the treasury of the United States. Is it not just, that out of that sum which is thus at our disposal, we shall pay over to her the amount she has expended? Why wait for any more favorable time? The best time to be just, is always the time when we have the power, and when the demand is made. I hope, therefore, the amendment will be adopted.

IMPROVEMENT OF RIVERS AND HARBORS.

MARCH 3, 1851

Allusions have been made in the progress of this debate to two places which have been named with favor by the House of Representatives for appropriations—Big Sodus and Little Sodus. The wit and ingenuity and eloquence of the Senate have been exhausted upon these cases. Sir, I beg leave, in behalf of these places, to say, that although their names may subject their importance to suspicion, yet that they are located upon a large inland sea—that that sea is one of five which, connected with rivers, constitute a channel for commerce which is unsurpassed on this continent, and unsurpassed on any continent on earth—that they are all portions of the great river, consisting of the lakes Ontario, Erie, Huron, Michigan, and Superior, and the Niagara, and the St. Lawrence, which rolls to the ocean a tide of waters exceeding that of even the Mississippi river itself—and that, if the senators who have indulged themselves in mirth at the expense of these places had examined the documents upon their tables, they would

have found that these two harbors are indispensable to the navigation upon that broad and majestic river—that they are indispensable to the security of life and safety of property—that they are useful for defence, and that one of them constitutes the best harbor on Lake Ontario, and that both are connected with the commerce of the Erie canal, which bears into the commercial emporium of this country a larger volume of freight than any other channel of communication, unless it is the Mississippi; and that the commerce to which this is tributary exceeds all the foreign commerce of the United States. So much I have felt called upon to say with respect to these places. If there be nothing more objectionable than these appropriations, there can be no senator on this floor, who, upon any ground of constitutional construction adopted by the democratic party, or any other, can refuse to vote for the whole bill.

We who support this bill believe we are in the right; they who oppose it believe they are right; thus far the balance of numbers has been on our side. I have been among those who have been content with that advantage, and have not opened my mouth from the beginning of the debate until now, and I shall not open it now to criminate the motives or the wisdom of the opponents of the bill, nor even to defend the policy of the bill. It is a question of opinion, one of those which is devolved upon Congress to settle by the Constitution; it can only be settled by a comparison of opinions and the test of votes. We have been ready any moment, and certainly without questioning the motives, or sagacity, or wisdom of our adversaries, to come to a vote without debate. We are now willing; it is not necessary to be satisfied that this bill can pass; that is not the question we are required to decide. The simple question is to let it be determined whether the bill can pass or not. That is the question. Let us have the question. We are ready. The other side have had the advantage of debate for two whole days. It is said that that is not enough. Mr. President, the number of working days, or secular days, is only seventy-eight in this session. This bill has had two full days for its consideration, one-fortieth part of the whole time of this session. Who shall say that when the Constitution limits this session to eighty working days, it is unreasonable to expect both the friends and the opponents of this bill to come to a vote after the expiration of two days, which days have been so far prolonged as to meet each other in the night.

CONTESTED SEAT OF SENATOR YULEE.

DECEMBER 1, 1852.

I THINK there is no doubt about the principle, that a person who presents *prima facie* evidence of his election as a senator must be admitted. We all agree about that. The question here in this case, however, is, whether there are not two persons presenting such evidence in support of conflicting claims.

The Senator from Florida, [Mr. MORTON] in behalf of one candidate, presents the Governor's certificate of election, or, what is to the same effect, a commission founded on an election or appointment by the legislature. Such evidence has been received by the Senate as *prima facie* from the earliest history of the government, and, therefore, if unopposed, would be ample and adequate now.

But the same senator presents, in behalf of another candidate, certified proceedings of the Legislature of Florida, which, he claims, show that he was duly chosen or appointed by that body. This form of evidence has always been accepted by the Senate also. No senator from the state of New York ever brought a commission or certificate from the governor. All of them have brought here credentials given by the legislature, or certificates by their officers, authenticating their action, and nothing more.

Thus each candidate submits sufficient *prima facie* evidence, and they are equal in position. This is so, subject to one question. The legislative certificate, after reciting what Mr. YULEE claims to be an election, shows that the presiding officer decided that there was no election, and the legislature proceeded to a new election. But that involves the question, whether what had already been done constituted an election or not. It is understood that fifty-eight members of the legislature attended: twenty-

nine voted for Mr. YULEE, and twenty-nine cast *blank ballots*. If these be counted as *adverse ballots*, then Mr. YULEE was not elected. If they be counted as *no ballots*, or as *nothing*, then he was elected. Now, I have no judgment formed on that question. The bias of my mind is adverse to the latter view. But it is a question, a real question, a grave question. I do not see how I can vote for the admission of the candidate holding the governor's certificate, without deciding this question, which I wish to hear discussed. In order to do exact justice, therefore, I shall vote for the motion of the Senator from Indiana, to refer to a select committee.

I do not see that the precedent in the case of the Senator from Illinois [Mr. SHIELDS] touches this question. That senator presented his credentials, and there was no adverse claimant. If I recollect aright, there was alleged to be evidence that he was not qualified to accept the place; but there was no question as to his having been elected or appointed to it by the legislature of the state. There was but one certificate, or one *prima facie* case, made out. On these considerations, as at present advised, I shall vote for the motion of the honorable Senator from Indiana.

ON THE REPEAL OF THE FUGITIVE SLAVE LAW.

FEBRUARY 17, 1851.

MR. PRESIDENT,—The record of the Senate shows this to be the character of its past action on this subject. That when a petition relating to the laws concerning fugitives from service was presented it was referred, if its object was to render those laws *more stringent* than they are now adjudicated to be. A bill, the effect of which is to increase the rigors of the law, has received a reference. Petitions for the amendment of those laws, so as to render them *less rigorous*, are denied a reference. That is one discrepancy. The record shows another, viz.: that when a petition is submitted to the Senate, on the motion of a Senator from Pennsylvania, praying even for an amelioration or a repeal of these laws, it receives a reference. When a petition for precisely the

same object is presented by a Senator from New York, it is denied a reference.

I shall vote against the reconsideration of the reference which has been made, as well because I am in favor of equal and exact justice to both sides of this question, as because it is my duty to insist upon equal and exact justice from the Senate to all its members. But I shall vote against the reconsideration for another reason. For the reason that I think it most injudicious and most unwise to deny a reference to a petition of any class of citizens of the United States, whether they be such as those who have sent here the petitition now presented by the honorable Senator from Maine, consisting of what has been called here the *elite* of society, or whether it be sent here by plain, unassuming republican citizens. I hold that all are entitled to equal legislative respect and consideration, and I never stop to inquire to which of the two classes petitioners belong. I have never obtruded upon the Senate the character, title, or rank of any person whose name was annexed to a petition relating to the present subject presented by myself.

But there is still another reason that I am glad to have an opportunity to state; and that is, that if the object of the Senate be to suppress agitation, in my poor judgment they take exactly the wrong course to do it. For years upon years, the Congress of the United States, in one or other branch, refused, in one form or another, to receive and consider petitions on the subject of slavery. The effect was a denial of the right of petition. History, I think, has settled the point, that that denial of the right of petition increased the agitation on the subject of slavery instead of diminishing it. Now, I hold it to be precisely the same in effect, whether the Senate shall refuse to receive the petition and reject the petitioners from their doors, or whether they shall go through the formality of receiving the petition, laying it upon the table, and denying it reference and consideration. Whatever my opinion, then, of the merits of petitions may be, I am in favor, when they are respectful, of giving them not only a hearing, but a consideration.

But I desire to state further upon this subject, that I am in favor of receiving these petitions for the purpose of consideration and legislative action. The Congress of the United States, at the last session, attempted to do this thing——

The President. The Senator understands the question before the Senate, does he not?

Mr. Seward. Certainly, sir, I do. I am speaking of the fugitive slave bill of the last session, which is the subject of the present memorial; a law which attempted, by very rigorous enactments, to enforce upon the free states of this Union the domestic and social economy of the slave states; an experiment which, I believe, has reacted, and will continue to react, upon the institution of slavery itself. It is of the same class of legislation as that which demanded in Great Britain a conformity in religion on the part of the catholic population of Ireland to the protestant ceremonies and the religion of England. I believe such experiments will fail, and I believe so because they are not founded in true political philosophy, in what constitutes the true political philosophy of this government, which should treat the states of this Union as being intrusted with the management of their own domestic concerns, and should leave the sentiments, and, as far as possible, the domestic institutions of the states to the care of the states themselves, and, where uniformity cannot be compelled, should be content without exacting entire harmony.

Whether these petitions are now referred and considered, or whether they shall be allowed to accumulate, as they will, in my humble judgment, continue to accumulate from session to session, the result will be that those who flatter themselves that they have arrested agitation will find that they have, by this very course, increased the agitation which was their object to allay.

I may say this, sir, I am sure, because, although I have been distinguished on some occasions by the epithet of agitator, I happen to be at least one of the members of this body—how many others there are I do not know—who never introduce this agitating subject of slavery here, who have been content with the debates which were had upon it, when it came legitimately before us in the form of bills requiring debate; bills which, in the process of legislation, became, or might become laws. I am one who has never spoken on the subject in this house since the bills referred to became laws, and of whom it cannot be said that I have on any occasion, by speech, writing, or otherwise, addressed the people on the subject since those bills became laws. Sir, I claim then to be one of those who have been content to leave these measures to the scrutiny of the people, and to abide their judgment and the

test of time and truth. I have added no codicils, and have none to add, to vary, enforce, or explain what I had occasion to say during the debates on these questions. Having thus no desire to interfere with the public investigation of these questions in any manner, but content to leave them to the examination of the people without interference on my own part, I may certainly be allowed to express my feelings on the present question. And I do therefore express my desire that the right of petition, whatever else we may do, may be respected and held sacred here; and for that reason especially, as well as for the others already stated, I shall vote against the reconsideration.

PENSION TO THE WIDOW OF GEN. WORTH.*

DECEMBER 17, 1851.

If it were possible to frame a general law embracing cases so meritorious as this, and *no others*, I would agree with the honorable Senator from Kentucky. But I despair of ever seeing any such law; and because it is only by special legislation that we can obtain the attention of Congress to a case so peculiarly meritorious as this, and because other applications, less meritorious in their character than this, would often obtain an equal consideration under any general law, I think it is right, and proper, and wise, to consider these cases separately. I think it just to single out for favor such as come recommended to the consideration of the government by the magnitude and heroism of services rendered, and the destitution of families bereaved.

Those cases which have not merit will undoubtedly fail by the way. I therefore cordially support the proposition contained in the bill. I shall record my vote for it now, and I shall be equally happy to record it on its final passage.

* Remarks on the bill granting a pension to the widow of General Worth, who fell in the war with Mexico, May 7, 1849.

COLLINS STEAMERS.

MARCH 1, 1852.

I DESIRE to submit the motion that when the Senate adjourns to-day, it adjourn to meet on Wednesday. The ground of the motion is, that a steamship, which is very interesting in its connection with the commerce of the country and with questions which are before Congress, is in our port, and that Congress has been invited, I understand, to visit it to-morrow. I believe the time would be well spent, under these circumstances, and I submit the motion. * * * * * * *

Mr. President, it is of course for every senator to determine for himself what susceptibility he has to improper influences; but it is not for one senator to determine for others. Now, I have no doubt that the honorable Senator from Arkansas, and that every senator here, is capable of examining the steamship *Baltic*, and even of receiving hospitalities on board of her, if such are proffered, without at all compromitting, in his own mind, the views which he thinks ought to govern him in regard to appropriations from the public treasury. Such a thought never occurred to me. I have no opinion made up in regard to any claim upon Congress in regard to appropriations for this, or any other line of steamers; but I am willing to be informed; I am willing to learn; and I do admit this fact in regard to this question, (if it be proper to go into the merits of a question before Congress on such a motion as this), that the country has a right, at a crisis of deep and exciting interest in regard to the commerce of the country, to demand that we should determine the question whether we shall secure the commercial ascendency of the world, or shall suffer it to pass from our grasp. The question is one in which the nation has a deep interest. I am desirous, for one, that those who have

called our attention to this subject shall receive every proper consideration, and that they should have an opportunity of presenting their claims in the most favorable manner possible.

So far as the argument of my honorable friend from Pennsylvania is concerned, I can say to him that I have no such preference for one interest over another as could sway my judgment in favor of a commercial to the prejudice of a manufacturing interest; and that, of all others, the measure which I would support with the utmost cordiality, would be a measure for the protection and relief of the iron manufacturers. It is indeed not possible for the manufactories and furnaces to be removed here, and Congress visit them here; therefore it will give me great pleasure to go with him to examine the condition of those manufactories in his state, as it has always given me great pleasure to see such manufactories flourishing in my own.

STEAMERS TO HAMBURG.

MARCH 23, 1852.

Mr. President: I present the petition of C. Hansen, of the city of Brooklyn, in the state of New York, who proposes that, with the consent and patronage of Congress, he will establish a line of steamers from that city via Rotterdam, in the Netherlands, to Gluckstadt, in Holstein, on the River Elbe, near Hamburg, so as to make semi-monthly passages for the transportation of mails, passengers, and freight. He offers to build four steamers, each of two thousand tons. The first two to be completed in two years, and the two others in three years. He asks Congress to pay him $100,000 per annum for the first three years, $85,000 for the next three years, and 75,000 for the last four years, for each vessel in active service.

The first benefit which the United States would derive, would be the establishment of semi-monthly mails, which in time would remunerate the government. The German population already in the United States is estimated at five millions, and it is increasing at the rate of more than one hundred thousand a year. The next

benefit to the government would be an increase of the naval steam marine, since the United States would have the right to take the vessels at any time at cost. A third advantage which would accrue to the country would be the substitution of safe, wholesome, and speedy American steam-vessels for the importation of emigrants, in place of the small, uncomfortable, and unhealthy sailing vessels of Hamburg, Rotterdam, and Antwerp. The new line would receive the trade of the three great rivers of continental Europe; the Elbe, Weser, and the Rhine. The fourth and capital advantage which it would secure would be the direct carrying trade and navigation with central continental Europe, which is now nearly engrossed by foreigners. The entire tonnage, inward and outward, in the trade of the United States and the Hanse Towns, in a single year, belonging to foreigners, is a hundred and eighty-three thousand tons.

The entire tonnage owned by Americans within the same period, was forty thousand tons. The value of the freights received during the same period by foreigners, was $1,470,000, while the value of the freights received by the Americans was only $384,000, showing that the trade, as now carried on, is worth $1,000,000, all of which, by the adoption of this enterprise, might be secured for ourselves. I remark, once more, that this great trade is carried on chiefly by British merchants. Nine-tenths of the American cotton consumed in continental Europe, is shipped first to England, and thence is carried to the continent, thus subjecting us to a large tribute in the way of expenses and commissions paid to English merchants. The enterprise connects itself, of course, with the present Bremen line, and these two lines would enable us to take control of a trade which at present we only divide with foreigners at great disadvantage to ourselves.

The petition is sustained by documents and references which I commend to the most favorable consideration of the Committee on the Post Office and Post Roads, to which I beg leave to refer the whole subject.

LOUIS KOSSUTH.*

FEBRUARY 18, 1852.

I HAVE voted against the proposition to lay this motion on the table, and I shall vote for the printing of this communication. I am influenced by considerations of respect and courtesy toward the distinguished personage from whom it proceeds. But I am influenced more by a consideration of the self-respect which I think the Senate owes to itself. The Congress of the United States, at a time interesting to the friends of liberty and free government throughout the world, sent a national ship to bring this personage from Europe to our shores. On his arrival here, the Congress of the United States, in the name and in behalf of the American people, bade him welcome to the capital. He came here, and was received by Congress. Upon his departing, he addressed to the Congress a respectful note through the President of the United States; but formalities of etiquette prevented the President from sending it to Congress, and it is now respectfully submitted by the gentleman himself. It seems to me that a refusal to receive it can do no injury to him, but may impair our own dignity. It is but courteous, under all the circumstances, to give a respectful *conge* to our guest. Congress having received this person as a guest, it appears to me, only acquits herself of an ordinary act of hospitality by receiving this parting communication. Under these circumstances, without at all referring to the contents of the paper, or to the manner of the paper, I think it is our duty to receive it. I see nothing objectionable in the communication; but if there was, courtesy, under all the circumstances, would seem to make it our duty to receive it, however objectionable it might be.

* Remarks on printing the farewell letter of Louis Kossuth.

DUTIES ON GIFTS.*

MARCH 27, 1852.

I FIND that this bill proposes nothing more than to remit duties upon a European donation to an American charity. The articles charged are the gift of Europeans for a benevolent and charitable purpose. I do not think it becomes the United States to tax the contributions of foreigners to our own charities, and therefore I am free to say that I shall vote for this bill; and under similar circumstances, I should vote for any other and similar bill. We all recollect very well that a few years ago articles of great value were sent as a present to the United States. They became subject to duties; and, although these articles were of great cost and usefulness, they were actually sold under the hammer at the custom-house to pay the duties imposed upon them, and they went into the hands of strangers. I hope that we shall always be willing to remit the duties upon such donations. Such charities are not frequent and large enough to impoverish the treasury.

THE EXPEDITION TO JAPAN.†

APRIL 3, 1852.

I DO not know that, after due consideration, I shall have any objection to the passage of this resolution. I can only say, that, so far as my own views are concerned now, I am not prepared to vote for it to-day. The subject is new here; and I think there is a possibility that some injury may be done to the public interest by passing such a resolution hastily, while no possible evil can

* Remarks on remitting duties on vestments imported by the Carmelite Convent at Baltimore.

† Remarks on a resolution inquiring of the Secretary of the Navy, the object of the naval expedition to Japan.

result from letting it lie over a few days—at least, for a day or two.

The honorable Senator from Michigan has said very justly, that he could conceive it very proper that there should be such an expedition to Japan. There might be many reasons—I think I could imagine very many reasons—which might well exist, why such an expedition might be very proper, which reasons it might be very proper for the Congress of the United States to understand, and yet which reasons it might not be very wise for the government of the United States to communicate to the world at the very moment of the transaction. When I look at the position in which we stand in relation to the Pacific and the East, and consider that we have advanced our posts to the coast of the Pacific Ocean; that the trade of the East is in the hands of European powers, who have been for two hundred years engaged by commercial treaties, by naval expeditions, and by armed power, in securing and parceling out the vast trade of the East among themselves; and that one nation alone has a monopoly of the trade of Japan, I think that, instead of inquiring why an expedition is now ordered by the government of the United States to Japan, the question naturally arises, Why have not the United States before sent an expedition to the East? But, as I said, I am not prepared to vote for the resolution to-day. I may be to-morrow; and I would respectfully suggest to the honorable mover that, as I find many others are in the same situation as myself, it would be probably wise to let the resolution lie over.

ST. MARIE'S CANAL.

APRIL 5, 1852.

I AM instructed by the Legislature of the state of New York to submit certain joint resolutions. I ask that they may be read.

They are in favor of an appropriation for the construction of a ship canal around the Falls of the St. Ste. Marie.

In submitting these resolutions, I desire leave to say that I am proud of the catholic spirit and patriotism which inspired them;

that I shall conform myself to the wishes of the Legislature of New York; and that I shall co-operate with the representatives of Michigan, and all others who may take an interest in the matter, with alacrity and perseverance in securing the earliest possible achievement of so great and truly national a work as a canal around the Falls of St. Ste. Marie. I move that the resolutions be laid on the table and printed.

APPORTIONMENT OF REPRESENTATIVES.*

APRIL 5, 1852.

I was inclined at first to look with disfavor upon the proposition to amend this bill so as to allow California a second representative; but upon examining the report of the committee, my mind has gone to the other conclusion. I will state the principal facts and considerations which seem to me to control the question. That California is entitled, like every other state in the Union, to representation in proportion to her population, is what no one will deny; that it is the office and duty of the government of the United States to ascertain the representative population, is equally unquestionable. They have undertaken to do so; and while that duty was being performed, California necessarily was passive. The census has been taken; it is a nominal compliance with the requisition of the Constitution. It is not a full compliance, if the census is radically wrong, erroneous, and false. In that case there is no census of California. To make that point clear, I have only to suppose the case, that in the reports of the census there might be such an omission, by some merely arithmetical error, as to reduce the population of California from 117,000 to 10,000, or 12,000. Surely, there would then be no census of California.

The next consideration, then, is, whether there is such a radical and great error in the census in regard to California as to vitiate the returns as a census? I think that is apparent *prima facie*. We are told that the census of California, with all the corrections of a majority of the committee, fix the population of that state

* Remarks on granting an additional member to California on account of an error in the census returns.

at the sum of 117,821 souls—men, women, and children, of all classes and conditions. Well, I might say that we, historically, know that this result cannot be true. The state of California has paid, in duties, into the treasury, during the last year, $3,000,000. There are no 117,000 persons in the United States, promiscuously collected together, who pay any such sum of revenue. The population of California export five millions of gold monthly, that is, sixty millions a year. There are no one hundred and seventeen thousand people on the face of the earth, with all the facilities to be obtained, who can procure from the earth, prepare, exchange, and send abroad, sixty millions of bullion per annum. It is apparent, then, that there is a radical defect in the census, and that it is not merely incorrect, but that it is so vicious that it is no census at all.

Now, what appears *prima facie* is corroborated by testimony which has been taken by the committee. It derives strong support from the circumstance, that when this question became very material on the admission of California, the population of the state was then estimated at one hundred and seven thousand. Since that time, there has been a lapse of eighteen months, I think —nearly two years—with a continual increase of population, as proved, not merely by emigration to the state, but by the consumption of merchandise, by the duties paid, and by the rapidly augmenting exports of productions. It is testified to by the representatives of the state.

Well, then, it being clear that we have a vicious census, the question is, whether we have the materials by which we can correct it? Upon that point my mind has wavered most; it is, whether the evidence we have is sufficient to enable us to say, that the population is now two hundred thousand in fact, instead of one hundred and seventeen thousand, as it is put by the census. Nevertheless, it seems to me we have what, under all the circumstances, ought to be satisfactory to us; that is, the action of the legislature of California. That legislature had the responsibility of apportioning the representation in the legislature, and the taxes among the people of the state, and among the different counties and districts of the state; that is to say, they have had to perform precisely the same duty we have had, for a different object, for a different purpose. They have had to ascertain precisely the same fact, with no motive, that we can conceive, to mislead them—

certainly without any expectation, on their part, that their action was to be adopted by us, or to conclude us. They have assumed three hundred thousand, as the population of that state. They had an opportunity to know better than we. They had no motive to mislead them. They did decide; they decided under official responsibility. It is true it is their act, not ours. We are not concluded by it; but I do not see how we can refuse to take their action as being a fair guide for ourselves, when we ourselves have neglected to ascertain the fact, the responsibility resting with us, or, having undertaken to ascertain it, we have failed to do so, owing to circumstances which rendered it impossible.

These considerations lead my mind to the conclusion, that it is but just and fair to allow California the additional representative which is proposed by the amendment under consideration.

There is one other question—whether we can do so consistently with the Constitution of the United States? Upon that point I have only this to say, that the census contemplated by the Constitution of the United States, is a census that is not so radically vicious as to be no census. We have taken a census; it is incorrect; it is erroneous; we must cause it to be corrected before it will be the census which the Constitution of the United States prescribes; otherwise, we shall be at sea in a case of greater magnitude hereafter. It may happen some time that the state of Pennsylvania, by erroneous returns, by erroneous enumeration, or by erroneous addition of the figures in the columns of the census, may be returned as having a population of only 100,000 or 200,000. Certainly such a census as that would not bind the government of the United States, or conclude Pennsylvania. It must be corrected somehow; it must be corrected here, and nowhere else. We have, then, I think, the power to correct it, and it is our duty to collect the materials by which to correct it. Having done this, I think we are bound to allow to California the benefit of correction, which is an additional member to that state.

THE PATENT LAWS.*

JUNE 11, 1852.

Mr. President,—The Constitution of the United States provides that Congress shall have power to promote the progress of science, and of the useful arts, by securing to inventors and authors the production of their genius for a limited term of years. It is a provision that became necessary in the Constitution of the United States, for the reason that the invention in which property was concerned was a matter of commerce, and commerce was necessarily put under the care of the federal government, instead of under the government of the states. It is an anomaly in the Constitution, because the rights to private property are secured to the owners by the several states with this exception; and I have stated the reason why this exception was made. It was a policy long before adopted by the government of that country from which we have derived some of the most valuable of our institutions—the Government of Great Britain. It was adopted in that country in the time of James I., when all monopolies which had been before granted by the crown, were revised and abolished, and the power of the crown to grant monopolies was thenceforth restricted to the case of patents securing for a limited term of years, to real inventors and authors, the production of their own intellectual labor.

The measures adopted by the Congress of the United States, to carry out this provision of the Constitution, were the same measures which had been earlier adopted by the Parliament of Great Britain. They went to the same extent, and they went no further; and being amended and improved nearly simultaneously in both

* Remarks on a bill to prevent the infringement of American letters patent for inventions by a fraudulent manufacture in foreign countries, and importation of the manufactured products.

countries, they have, with some degree of success, answered the purpose for which they were intended. But a time has come when a case has arisen in which the existing remedies are inadequate to fulfill the constitutional purposes. The manufacturer of a useful machine finds the production of his own patented machine on sale by others, in his own country, his own state, his own town. He seeks his remedy under existing laws. It is ineffectual, because the existing remedies can only be enforced by reaching the person of the infringer who makes the article, and the machine with which the article is manufactured. But the infringer is in Canada, beyond the reach of legal process; his machine is in Canada or Nova Scotia, beyond the jurisdiction of the United States; and the products are, nevertheless, here on sale. Thus the American inventor, who pays a great tax to the government for the privilege of manufacturing his own article, is supplanted in the market by the foreign manufacturer, who uses the inventor's own machine for the purpose without responsibility to him.

Thus, sir, the remedy which is provided by the Constitution, and secured by the law, is inadequate. The right of property is, nevertheless, to be protected, or else the constitutional provision fails. What, then, is to be done? Either you must abandon the duty of protecting the property, or you must furnish a new and better remedy. That is the object of this bill; and it is proposed to be accomplished by providing that the manufactured article produced abroad and brought into the United States, shall be forfeited to the use of the inventor in certain cases. What objection is there to this? It is stated by the honorable Senator from Delaware, [Mr. BAYARD] that this bill proposes the introduction of a new principle; but I humbly submit that there is no new principle involved in the matter—nothing that has the dignity, nothing that is worthy of the name of a principle. The principle which we seek to establish is, that the inventor shall be protected in his property, and the duty of Congress is to see that he is protected. The remedy proposed involves no new principle whatever. It is merely carrying out the principle already recognized and established.

But the honorable Senator from Delaware observes, that heretofore we have never seized and subjected to confiscation the manufactured product, but have left it free and open to commerce, and that we therefore shall establish a new principle by seizing the product in this case. Sir, I repeat that this proceeding in-

volves no new principle, for certainly the man who uses the property of the inventor can claim no protection on principle in using it to the injury of his neighbor, who is its lawful owner. It is, therefore, only making the existing remedy more stringent. It is not departing from a principle at all; for the only principle in question is "protection of property by law." When this new remedy is proposed, two questions arise: first, whether it is necessary; and it is conceded on all hands that property of this kind cannot be protected, unless some new remedy is given, nor can the wit of man devise any other provision which will give additional stringency to the old remedy.

What other question remains about this additional remedy? Simply this: whether it is a remedy which is capable of being perverted to do greater injustice to the innocent than it will afford protection to the patentee. That, however, is guarded against by requiring that the person who is to suffer this penalty shall be proved to have committed a *fraud*—shall be proved to have had a guilty knowledge that the article he was purchasing was the property of another—the property of an American citizen. Is there anything new in that? No principle is better established than that property stolen shall not be made the property of another by purchase. There is no new principle in saying, that though the thief shall be obliged to surrender the property stolen while it remains in his hands, that when he has sold it in the market, the purchaser shall not have a title to it, even though he purchased it innocently. But in this case we have adopted a precaution in declaring that no man shall be subject to damages in consequence of being in possession of these products, unless it is proved that he knew that it was the production of a machine of an American citizen secured to him by a patent. Now, when you bring this knowledge home to an individual, he is convicted of fraud, and you only apply in this case the old principle, that title shall not be diverted from its lawful owner by fraud.

The Senator from Delaware [Mr. BAYARD] seems to suppose that the remedy is capable of being abused. He cannot deny that it is unquestionable in its nature and character. It is not capable of being abused, because it will be necessary for the person who seeks to prevent another from purchasing these products to give him notice that they are the production of a patented machine or invention. Neither can a case of dispute arise between patentees,

because the owner of a patent must give notice to the intending purchaser, before he buys, that certain goods manufactured by his machine, are on their way from a foreign country; and he must prohibit the purchase; if any one buys after that, he buys with his eyes open, and he must submit to the consequences. It is not a question of conflict of patents, but of violation of a recognized patent. The honorable Senator from Delaware says that an injunction would reach the case, and afford a sufficient protection. This remedy would be defensible only on the ground that the use prohibited was unlawful and injurious. But the provision to which he objects rests on the same ground, to wit: that after notice is given, the use is unlawful and injurious. If it be right to enjoin a merchant not to offer these articles for sale, or to enjoin a purchaser from using them, then it is right to provide that, without a resort to the expensive litigation of an equity suit, the person fraudulently purchasing these articles shall not enjoy the benefit of his fraud. An injunction is never defensible, except on the ground that all other remedies are inadequate. There is, then, no need to resort to an injunction, because previous notice and confiscation in defiance of it would be not only a more simple, but a more adequate remedy also. To require the inventor to sue out an injunction, is to require that he shall be subjected to a great expense, which could be saved by giving a simple notice.

I had so much to say on the question generally.

The Senator from Arkansas [Mr. Borland] objects, that if the principle is a sound one, it ought to be extended so as to apply the law to pirated articles manufactured in other countries as well as in the North American British provinces. My reply will be brief. The principle is the same, and it would be easy, and I doubt not it would be right, to extend it; but it is not now necessary to extend it. In those foreign countries which are not contiguous to the United States, there is no such evil as that of infringement upon the rights of American inventors by manufacturing articles with their own patented machines, and sending them here for sale. The only cases which have come to our knowledge, are those in which these articles are manufactured in British North America, contiguous to the United States. This bill, then, is sufficient for present purposes, sufficient for the present administration of justice, without extending it further. Senators representing other portions of the United States than that

where the evil is suffered, object to its being extended further. The case, then, is just this. It is necessary to give the bill this extent, and it is unnecessary to extend it further. We, who feel the need of it, are willing to take it, without extending it further, for no other object than to carry out an abstract principle.

The fact that the infringement of American patents is confined to the contiguous British provinces, seems to present an anomaly. But that anomaly may be easily explained. All those manufactures which find a provision of this kind necessary, are manufactures of wood or lumber, and timber. Wood, lumber, and timber, are not produced in any foreign country so abundantly as to tempt such infringements, except the British provinces contiguous to the United States. They are not produced so plentifully that their production in foreign countries can be made so as to undersell the patentee in our own markets. Take, for instance, the article of lasts, a large quantity of which are manufactured by patented machines. The lumber can be obtained even more cheaply in Canada and Nova Scotia than here, directly across rivers, which are traversed by ferries at all hours of the day and night; and it will be seen at once, that trade in the article, if allowed, would become indiscriminate, unless there is such a remedy as this bill contemplates. But there are no last-makers in England, or France, or Russia, sending their lasts here, manufactured by our machines, or otherwise.

On the contrary, so cheap are the products of our machines for working in wood, compared with those in Europe, that without any patent whatever, we do sell a vast amount of articles of this kind, especially of clocks, all over the continent of Europe, although we have no bounty there, and must pay a duty upon them when introduced there. It is seen, then, I hope, that this bill is right in itself; that it is necessary; that nothing less will be adequate; and that more than this bill proposes is unnecessary, and that a constitutional obligation upon Congress requires that it should be passed.

I will say one word in reply to the suggestion of the Senator from Virginia, [Mr. Hunter] and shall postpone any further remarks until after the engrossing of the bill.

It seems to me necessary now to say, in reply to so much of the argument of the senator as supposes that there is a remedy for this difficulty by going into Canada, and taking out a patent there,

that the cases of injury which have brought this bill before the Senate, arise in respect to patents which have been already renewed and extended—very meritorious patents, about which there has been no contention. I speak particularly of a patent for turning irregular forms of wood, for which it is impossible to get a patent in England, and to which, therefore, the argument of the Senator from Virginia will not apply.

In regard to the question raised by that honorable senator, that we are establishing a new principle, I submit, for his consideration, that there is really no such embarrassment in this case. We have laws which enable us to protect the rights of inventors, by arresting the fraudulent manufacturer of the patented articles. That is the remedy under our present system. We must reach the person of the infringer, and we must be able to reach his machine, and for that purpose he must be a resident of the United States. Therefore, without seizing on the production of the patented article, we can, in such cases, punish infringement, prevent piracy, and protect the rights of inventors. But where a person, resident in this country, is in the possession of a patent, and another person, wishing to evade that patent, goes into the adjacent province of Canada, and there erects his machine, he is beyond our reach, and is subject to no law that we can enact. We cannot visit him with the punishments authorized by our laws; we cannot reach him, and seize his machine, and break it up, as we could do if he were a resident of the United States. There is no remedy, then, but to prevent the importation of articles manufactured abroad for the purpose of defeating the constitutional policy of the United States, which is the protection of manufacturers in their property.

WAR STEAMERS FOR HARBOR DEFENCE.

JUNE 15, 1852.

Introductory Note.—On the motion of Mr. Seward, the Senate resumed, as in Committee of the Whole, the consideration of the joint resolution authorizing the completion of a war steamer for harbor defence; which requires the Secretary of the Navy to have completed, without unnecessary delay, the war steamer contracted for with Robert L. Stevens, in pursuance of the act of Congress of April 14th, 1842.

Mr. President,—I hope this resolution may pass. The contract with Mr. Stevens was made, not upon an assurance and a certainty that such a steamer as this could be built, but by way of experiment to ascertain whether it was possible; and to secure such a result, if it was possible. It was wisely made, if the character of Mr. Stevens for intelligence, sagacity, and science, gave a guaranty that he would ascertain this important result. No one can question that the character of Mr. Stevens afforded that guaranty. A more accomplished, scientific, mechanical engineer does not exist in this or any other country. The country is filled already with trophies of the success of his experiments.

It was wise, then, to obtain this measure of defence through this agency. And now I ask, whether anything has occurred to shake the confidence of the public in the success of the experiment? Nothing has occurred; the character of Mr. Stevens remains as unquestioned as before; and he has prosecuted the experiment with diligence, with the most lavish expenditure of his own private means; and yet, at the same time, with caution marking every step—going across to England more than once for the purpose of obtaining materials there, which could not be obtained here.

This would seem, then, to be a question foreclosed, if the action of Congress ever forecloses debate. Congress went into this matter for the purpose of experiment. They went into it wisely. Having

no substantial cause to recede, they are bound in good faith to him, and bound by considerations of the original wisdom of the proceeding, to prosecute it to an end. The question whether he submitted his plans to the department, is a question that has passed. No material inconvenience or injury has resulted from it. If he did not at that time submit his plans, they are now before the department. But we are told that Mr. Stevens cannot succeed in producing such a vessel as was contemplated. Sir, I remember that all the scientific men in England—and there are as scientific men there as anywhere—maintained that it was impossible to navigate the ocean between the two continents with steam. That this was settled as a principle of science; established, it was supposed, by the *savans* of Europe, the very day when the Sirius and Great Britain arrived simultaneously from England in the harbor of New York. There is no way of knowing what cannot be done in science, but by trying.

Sir, I remember to have met a gentleman who told me that, in the year 1804, 1805, or 1806, when he was visiting Paris, at a dinner party at the American minister's, there was a young man exceedingly loquacious and offensive, because he engrossed too much of the conversation; and he confined his remarks to a single topic, and that was the subject of navigation by steam power alone. And he said to incredulous ears all around him, that if he could only get the sum of $10,000, he would, in two years from that date, have a steamboat upon the Hudson river, which would navigate from the commercial to the political capital of the state of New York, at the rate of four miles an hour. He was voted an enthusiast. That young man was Robert Fulton. The government did not furnish the means, but he obtained them from liberal patrons, and completed his experiments, and we have the vast result.

I remember also, sir, that when there was a project to establish communication by the use of the electric fluid, but a few years ago, it was maintained that that was impossible. Congress appropriated the money to be applied, in the hands of a scientific man, in whom the nation had confidence, that, if a desirable result could be obtained, he would produce it—and they gave it not grudgingly—to make the experiment between this city and Baltimore. In spite of incredulity here and elsewhere, the experiment was successfully carried through.

It would have been just as wise to have arrested Fulton in his first experiments, or to have given over the steam navigation on the Atlantic without an experiment, or to have arrested the progress of Morse in producing his invention, as it would be for you, in regard to Mr. Stevens's invention, to stop at the point where you are.

Mr. President, on the general question it seems to me there can be no doubt. I remember, a few years ago, when the British government demanded of the American government the surrender of a subject of the crown of Great Britain, who was arrested on a charge of crime in the state of New York, and intimations were made by the public newspapers and elsewhere, that, unless the demand was complied with within a given time, the port of New York would be bombarded by a British fleet; and British vessels were said to be on their way and hovering on our coast for that purpose. I remember the consternation and panic which were produced, not only in that great commercial capital, but throughout the United States, and that men were willing, without inquiring into the justice and merits of the question, or waiting to deliberate or debate upon it, to save the commercial capital of the country by surrendering to the demand of that foreign power at once—to humble the nation at the feet of the mistress of the seas. That is precisely the condition in which we are to-day, and in which we shall be until we adopt some policy of defence for our great commercial towns; and I know no policy that can be adopted so wisely as to furnish to judicious, qualified, and scientific engineers, the funds necessary to produce, if possible, a floating defence, to be used in aid and in co-operation with the stationary defences of American ports. I hope, then, that the resolution may pass.

CATLIN'S INDIAN GALLERY.*

JUNE 25, 1852.

Mr. Catlin is an American citizen, who was born and educated in the state of Pennsylvania. Gifted with genius for the arts, and imbued with a spirit of enthusiastic devotion to the fame of his country, in early life, without either public or private patronage, he repaired to the haunts of the savages in the recesses of the continent, and winning their kindness and confidence, while as yet the white man was almost unknown to them, he visited, in the period of eight years, forty-eight tribes, and in the end, brought away this very large collection of paintings, which exhibits with great felicity, complete views of the most interesting forest and prairie scenes of the continent, with portraits of the various characters found there, and ample illustrations of the political, social, and religious customs, ceremonies, and costumes of the race—a collection which gratifies an enlightened curiosity now, and will, with the progress of time, acquire an inestimable value as an aid to the philosopher and historian in the study of human nature in a peculiar stage of development, never before sufficiently marked. Having completed his collection, Mr. Catlin, in 1837, exhibited it in this city, and in pursuance of his original purpose, offered it to Congress, who manifestly thought favorably of that proposition; but delays occurred, and Mr. Catlin, without abandoning his wish for such an eventual disposition, took them to Europe, as well to support himself by exhibiting it, as to use it in preparing a great work, since completed, on the history, customs, and manners of the North American Indians. The collection excited much interest and admiration in Europe, and obtained for Mr. Catlin many marks of respect and consideration from the friends of

* Remarks on the purchase of Catlin's Indian Collection.

science and the arts in foreign courts. While at Paris the American artists, then residing there, among whom were several whose fame has become a part of our national glory, addressed a memorial to Congress, praying them to adopt measures to restore the collection to our country, and to place it among her records. In support of this proposition, they remarked that the collection was not only interesting to our countrymen generally, but absolutely necessary to American artists; that the Italian who wished to portray the history of Rome found reminiscences of her sons in the Vatican; that the French artist could study the Gauls in the Museum of the Louvre; and that the Tower of London was rich in the armor and weapons of the Saxon race; and that, without such a collection, few of the glorious pages of our early history could be illustrated. The same view of the subject was taken by the Joint Committee on the Library of Congress, to whom that interesting memorial was referred. More recently, a communication has been submitted to Congress, by several eminent members of the Historical Society of New York, recommending the purchase of the collection on substantially the same grounds. I concur in these opinions, and I add that, admitting the merit of the collection, which is conclusively established by documents now before the Senate, and admitting also the ability of the government to secure it, which cannot reasonably be denied, no argument can be brought against the purchase of it on just and reasonable terms, which would not equally weigh against every appropriation by Congress for the acquisition and preservation of the materials of science and of history; against the deposit of cotemporaneous works in the library of Congress; the illustration of grand and interesting events in the national progress on canvas and in marble, which grace the chambers, walls, and gardens of the capitol; and, indeed, against all the treasures of science and art already gathered into the archives of the country. Copiousness is essential to the value of the instructions of history, and if we should attempt a discrimination between the various materials gathered for such a use, surely the last this great and generous people should exclude would be those that supply us scanty information concerning the heroic yet simple race whom, with a strong arm and little tenderness, we are expelling, and perhaps unavoidably exterminating, throughout the broad domain of which they once were undisturbed and unquestioned occupants.

To reject the cultivation and perfection of the arts altogether, would be to concede that in all that makes us differ from the savage tribes, we are neither better nor wiser than they. In all countries, and especially in a republic, the great responsibility of those who are charged with the conduct of the affairs of society, is the education of the people in valor, wisdom, and virtue. There is no point at which such education can be wisely arrested; since the more complete and universal education becomes, the more fully the democratic principle is developed, and the more safely and easily is free government sustained. While the responsibilities of education, in a strict sense, rest upon the several states, the right and duty of the United States to promote that great object incidentally, in the administration of the national domain, and in its exclusive legislation in the District of Columbia, have been fully acknowledged and practically exercised and performed since the foundation of the government. I invoke the performance of a similar duty now. Why should not the capital of the United States take on the classic dignity and the refinement worthy of the seat of government of a great people? How shall we better strengthen the bonds of our Union than by rendering the capital an object of pride and interest to the people of every state? How shall we impress mankind with the excellence of the republican system more cheaply and more effectually than by exhibiting to them the archives of art and science in this chosen seat of republican authority?

A letter recently received from Mr. Catlin brings the painful intelligence that he has sunk under the pressure of debts, and is now imprisoned, while his collection is advertised to be sold on execution in London. Under these circumstances, he reduces his price to the government from $65,000, its former estimated worth, to $25,000. While these unhappy circumstances furnish no sufficient ground for interposition by the government for his relief, they may, nevertheless, be allowed to stimulate us to the action recommended, if, as has been argued, it is wise and proper in itself. It is obvious that without a careful inspection of the collection, so as to ascertain its present condition and value, it would be unwise to name a definite price. The committee have therefore recommended wisely that the subject be intrusted to an agent, to be appointed by the President, with a limited discretion.

THE FISHERIES.

JULY 23, 1852.

I SHALL vote with very great pleasure for the resolution of the Chairman of the Committee on Foreign Relations, [Mr. MASON.] I have read it with some care; and I perceive that it is limited to two objects—in the first place, a call for information in the possession of the executive branch of the government; and in the next place, for information as to whether that branch of the government has resorted to any measures for the purpose of exhibiting, on the part of the United States, an armed force in the waters which are the scene of the difficulties which have arisen. I see nothing improper in the calls made. While all of us feel the importance of the fisheries, on the north-eastern shores of the United States, it must also be admitted that there is no state—neither Maine, for which the Chairman of the Committee on Commerce [Mr. HAMLIN] has spoken; nor Massachusetts, for which another senator [Mr. DAVIS] has given expression—that is more interested than my own in this question. It is very clear that there can be no collision of the forces, or of any portion of the forces, of Great Britain and the United States on the Bay of Fundy, or in the waters adjacent, which will not necessarily involve this whole country in the blaze of war; and if that event should arrive, there is no part of the Union that will be exempt from its calamities, and certainly that state which I, in part, represent, will be one of the first to be visited with its responsibilities and its disasters.

While, therefore, I see, and admit, the propriety of calling for this information; if it be true, as there seems to be no doubt that it is, that the British government has exhibited a force preliminary to negotiation, and while I think that the suggestion is a pertinent one that the government of the United States should be prepared

with a corresponding force for the purpose of maintaining an attitude equally commanding and advantageous for negotiation; while I think that this resolution, in itself, is not only harmless, but proper, I must deprecate, with the Senator from Massachusetts, [Mr. DAVIS] if I understood the spirit of his remarks correctly, any undue excitement on this subject.

It is a great and important question, and whether it is to be terminated, as I have no doubt it will be terminated, peacefully, or is to be terminated by a sterner arbitrament, it is very clear that it will be conducted most wisely and most safely on our part, if we keep cool during the present stage of the controversy; and I, for one, propose to keep myself in that temperament. Nor do I think that there is any thing extraordinary in newspaper accounts of the negotiation on this subject. We all know that the honorable and distinguished Secretary of State is accustomed, precisely at this season of the year, to resort to his native climate as a protection against that of this latitude, which is injurious to his health, and that he had resorted there before any of these questions had arisen. He is there recruiting his energies, and, therefore, I repeat that in the very moment we are inquiring whether a force has been sent, it is discourteous to the President, as it is unwise and imprudent, to bestow censure for not having done that which we imply that we suppose he may have done, or will yet do in good season.

On the whole, I see no necessity for any excitement on this subject. A war with Great Britain will be no trifling affair, and, as I said before, we shall go into either negotiation or war, and come out of it more safely, if we are to go into it, keeping cool and taking our time, and taking every advantage of circumstances which may arise. I need not say that when such an exigency comes, I shall be as well prepared to meet it, its responsibilities and its consequences, and to stand as long and firmly by the national rights and dignity as any one here or elsewhere.

This is either a grave question, or it is not. If it is a trivial one, time is only wasted in discussing it. If it is a serious one, it is worth while to know what we are disputing about. Now, we certainly are not disputing about this call for information, for we are unanimously in favor of that, so far as it is possible to ascertain from the sentiments expressed by gentlemen on this floor. Then the only question about which there is any dispute is,

whether any fault should be attached to the executive branch of the government, thus far? I submit to senators, that if there be a prospect, however dim and distant, of a war with Great Britain, it is an important and serious question, and one of the best modes for losing the advantages in a negotiation, or for securing our rights or for preventing that war, is to show the British nation at the outset that we are not agreed among ourselves; that we are taking to task the executive department of our government, for want of sufficient promptness in securing our interests. But let that pass.

What evidence is there that the executive has failed, or that the Secretary of State has failed, or is about to falter in securing the national rights? Why, our first knowledge of this question comes from a publication of his own, announcing it to the country, and declaring that, in his opinion, the right of the question was on our own side; and that communication was made before he had time to examine the facts, without the evidence since disclosed, showing that the position assumed by the British government is wrong, and that the position assumed by the fishermen is right. The Secretary of State is already committed. What, then, is wrong? Gentlemen say that he is proceeding to negotiate while there is an armed force collected by the opposite party, to compel us, if we will negotiate, to negotiate under threats or menaces. Sir, it is the business of the Secretary of State, and of the government, always to be ready, in my humble judgment, to negotiate under all circumstances, whether there be threats or no threats—whether there be force or no force; but the manner, and the spirit, and the terms of the negotiation will be varied by the position that the opposing party may occupy. And there is nothing new in this. We have a treaty that is called the treaty of Washington, which settled conflicting boundary claims between the United States, embracing a portion of the state of Maine, and the province of New Brunswick, and it was consummated, as the negotiation was held, while both parties were standing on the line, ready, if the negotiation failed, to establish their respective pretensions by force.

Sir, we sent a minister to Mexico to negotiate the payment for indemnity for commercial obligations and other claims; but at the same time we marched a force to the Rio Grande, and we afterward dictated the terms of peace to Mexico, with a victori-

ous army in her capital. I agree that our position should be made equal, equal in every advantage for negotiation; and if it be true —and there seems to be ground to believe it is—that the British government has resorted to the extremely improper measure of collecting a force in those waters, preliminary to the negotiation, then I subscribe to every word which has been uttered by the Senator from Virginia, and implied in his resolution, that we should be represented there by an equal force. One object of this resolution is to ascertain from the President whether he has sent such a force. Either we believe that he has sent such force or we believe that he has not. If we assume, with the Senator from Connecticut, [Mr. TOUCEY] that he has not, and that he is indisposed to do so, and will not, then it is an insult to the President to ask him if he has sent the force, which we have concluded in our own minds that he has not sent. We should at once proceed to a vote of censure, and not to a resolution of inquiry.

JOHN M. CLAYTON AND THE NICARAGUA TREATY.

JANUARY 10, 1853.

MR. PRESIDENT,—On the 19th of April, 1850, what is called the Nicaragua Canal Convention was signed at Washington by John M. Clayton, then Secretary of State for the United States, and Sir Henry Lytton Bulwer, then a minister here for Great Britain. As approved by the Senate and signed by the negotiators, and transmitted to Great Britain, it contained, among others, the following provisions, viz:

"ART. I. The Governments of the United States and Great Britain hereby declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the said ship canal, agreeing that neither will ever erect or maintain any fortifications commanding the same, or in the *vicinity* thereof, or occupy, or fortify, or colonize, or assume, or exercise, any dominion over Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America; nor will either make use of any protection which either affords, or may afford, or any alliance which either has, or may have, to or with any state or people, for the purpose of erecting or maintaining any such fortifications, or of occupying, fortifying, or colonizing, Nicaragua, Costa Rica, the Mosquito coast, or any part of Central America, or of assuming or exercising dominion over the same; nor will the United States or Great Britain take advantage of any intimacy, or use any alliance, connection, or influence. that either may possess with any state or government through whose territory the said canal may pass, for the purpose of acquiring or holding, directly or indirectly, for the citizens or subjects of the one, any rights or advantages in regard to

commerce or navigation through the said canal, which shall not be offered on the same terms to the citizens or subjects of the other.

"ART. VI. The contracting parties in this convention engage to invite every state with which either or both have friendly intercourse, to enter into stipulations with them, similar to those which they have entered into with each other, to the end that all other states may share in the honor and advantage of having contributed to a work of such general interest and importance as the canal herein contemplated. And the contracting parties likewise agree that each shall enter into treaty stipulations with such of the *Central American States* as they may deem advisable, for the purpose of more effectually carrying out the great design of this convention, namely, that of constructing and maintaining the said canal as a ship communication between the two oceans for the benefit of mankind, on equal terms to all, and of protecting the same.

"ART. VII. The Governments of the United States and Great Britain, having not only desired, in entering into this convention, to accomplish a particular object, but also to establish a general *principle*, they hereby agree to extend their protection, by treaty stipulations, to any *other practicable communications*, whether by canal or railway, across the isthmus which connects North and South America, and especially to the inter-oceanic communications, should the same prove to be practicable, whether by canal or railway, which are now proposed to be established, by the way of Tehuantepec or Panama."—9 Stat. (U. S.) at Large, 995.

On the 29th of June, 1850, Sir Henry L. Bulwer gave notice to Mr. Clayton that he was instructed to insist, in ratifying the convention, on an explanatory declaration, that the engagements as to neutral territory did not apply to her Majesty's settlement at Honduras and its dependencies. On the 4th of July, 1850, John M. Clayton replied, that the United States also understood that those engagements did not apply to British Honduras and its dependencies; and with these mutual explanations, the convention was ratified, and the ratifications were exchanged.

The British settlement at Honduras and its dependencies consist of the town of Belize, on the coast of the Caribbean Sea, with a tract of almost barren and uninhabited country stretching inward, containing about fifty thousand square miles, and, as is alleged, of certain islands lying near by in that sea, named Ruatan, Bonacca, Utilla, Barbarat, Helena, and Morat, which territory and islands are marked, on all British maps, as colonies of Great Britain.

On the 17th of July, 1852, the British authorities at the Belize issued a proclamation announcing that the Queen had constituted those islands a distinct colony, by the name of the Bay of Islands.

On the 6th of January, 1853, the President of the United States sent to the Senate an answer to a previous call for information, and that answer contained the notes between the late Secretary of State and the late British minister, declaring the construction of the convention which I have mentioned.

The honorable Senator from Michigan thereupon said that paper disclosed a very extraordinary fact, to wit: that while on its face,

and as was understood by the Senate, the convention included British Honduras and its dependencies, it was without the knowledge or consent of the Senate explained by the negotiators at the ratification to exclude them; and that thus, in derogation of the rights of the Senate, the construction of the treaty was changed in a vital point; that in this transaction, the executive department of General Taylor's administration had committed a great error, unprecedented in diplomacy. And he protested that neither the Senate nor himself, in approving, understood the convention as it was thus shown to have been understood by the negotiators in ratifying it, and that if it had been so understood by the Senate, it would not have received a single vote; and in this protest he included the honorable Senator from Alabama, [Mr. KING] who at the time was Chairman of the Committee on Foreign Relations; and he alleged that that gentleman had told him that he had supposed until that day, that the project of accepting the Queen of England's qualification of the construction of the treaty had been abandoned, and that the convention stood without such qualification on its original provisions.

The honorable Senator from Louisiana [Mr. DOWNS] said that he thought the whole object of the convention was to get the British out of Central America, and that it was only on assurances given by Mr. Clayton himself that this was the effect of the convention, that he and others, so far as he knew, had voted for it.

The honorable Senator from Ohio [Mr. CHASE] quoted from a geographical work the following description of Central America, and affirmed that he and the Senate understood that all the region thus described was included in the convention, viz:

"Central America is the long and comparatively narrow region between latitude 7 deg. and 22 deg. north, and longitude 78 deg. and 94 deg. west, connecting the continents of North and South America, and comprising, besides the *Central American Confederation*, Yucatan, parts of Mexico and New Granada, Poyais, the Mosquito coast, and British Honduras."

The honorable Senator from California [Mr. WELLER] declared that he was astonished to hear the Senator from Louisiana say that he was surprised at anything, however stupid, that might be done by the late Secretary of State, Mr. Clayton, and that he [Mr. WELLER] had never known Mr. Clayton to have any connection with any public affair in which he did not show himself excessively stupid, to say the least.

Mr. President, I shall endeavor to show that these censures are groundless, and unintentionally unjust.

First. Granting, but only for the sake of argument, that the facts stated are true, I shall show that *the transaction is not unprecedented in diplomacy.* The ninth article of the treaty of Guadalupe Hidalgo, as signed by the negotiators, was struck out by the Senate, and another was substituted in its stead. The Congress of Mexico refused to ratify it, because it had thus been changed, as they said, in a vital part. The Secretary of State, Mr. Buchanan, by direction of the President, Mr. Polk, without the consent or knowledge of the Senate, signed and delivered a protocol, declaring that the suppression and substitution were not understood by the United States to diminish what had been stipulated before, and thereupon the treaty was ratified, and the ratifications were exchanged. I do not say here that that transaction was wrong, or that, whether wrong or right, it justified Mr. Clayton. All I do say is, that even if Mr. Clayton's misconduct has been such as is alleged, it is, nevertheless, not unprecedented in diplomacy.

Secondly. I shall attempt to show that the memories of the complaining senators are at fault, and that neither the whole nor the chief object of the convention was as they now suppose they then understood, *to get the British out of Central America.* The preamble declares its object to be to "set forth and fix the views and intentions of the two nations with reference to any means of communication by ship canal which may be constructed between the Atlantic and Pacific oceans, by way of the river San Juan de Nicaragua, and either or both the lakes of Nicaragua or Managua." This preamble, and the quotations from the convention before made, show that the United States had a very different object from that described by the senators, unless we are to suppose that the United States had really in view a partial, narrow, and selfish object; while they held out to the other contracting party, and to the world, that they had in view a different, broad, comprehensive, and beneficent one; which of course is not to be admitted.

Thirdly. I think the memories of the honorable senators are at fault again, and that *they did not, when approving the convention, understand it to include all Central America as they have now described Central America.* The region about the isthmus which divides North and South America is but thinly settled by Europeans and their descendants, and therefore, as yet, very imper-

fectly known in Europe and in the United States, and there is an ever-recurring confusion of names, as is apt to happen in such cases. The name Central America, employed in the convention, has a double sense, a geographical one and a political one, and these are widely different. America is divided, geographically, into North America, South America, and Central America. Central America, *geographically*, is Middle America, viz: that part of this great continent which lies between and connects North America and South America together. The name is applied in this sense in the description quoted by the Senator from Ohio, and so geographical Central America does include not only Honduras and the British coast, with the five Central American States, but also the departments of Darien and Panama, and Paraguay, in New Granada, and the whole or parts of six of the states of the United States of Mexico.

Other geographers apply the name still more broadly, and embrace all the regions extending from latitude 7 deg. north to latitude 26 deg. north.

Mr. CHASE. If the senator will allow me, I will state that I read from a work of authority. That English work describes Central America as lying between two parallels of latitude. It did not assert that all the region between those two parallels belonged to Central America, but named specifically those districts or territories which constituted the country so designated. And I said that we had a right to believe, when the treaty was before us, that the term "Central America," used as it is used, included all over which either of the contracting parties claimed, or might claim, any jurisdiction. Of course I did not assert, or mean to assert, that Great Britain intended simply to exclude herself from that portion of country over which she had no jurisdiction, and I am sure the Senator from New York does not mean to represent me as making such a statement.

Mr. SEWARD. I will read from the printed speech of the honorable Senator from Ohio, to show the use he made of the authority which he quoted. The Senate will then judge whether he has corrected me or himself. That Senator said:

"Now, for the purpose of showing what the British authorities at that time conceived to be included within the limits of Central America, I wish to read an extract from a work which I have before me. It is Johnson's Gazetteer, published in London in 1851, a work of very high authority. Its description of Central America is in these words:

"'Central America is the long and comparatively narrow region between latitude

7 deg. and 22 deg. north, and longitude 78 deg. and 94 deg. west, connecting the continents of North and South America, and comprising, besides the Central American Confederation, Yucatan, parts of Mexico and New Granada, Poyais, *the Mosquito coast*, and *British Honduras*.'

"That is the description which an eminent British authority furnishes to us of Central America. That is the description which we had a right to believe was intended by this treaty when it was presented to the Senate."

This is geographical Central America. But it is laid down on other maps, and described by other geographers, as extending from the 7th to the 26th parallel of north latitude. That would embrace not only the Isthmus of Tehuantepec, but also the capital of Mexico, the states of Coahuila and Tamaulipas, and even a part of Texas, in our own republic.

On the other hand, the name of Central America has a *political* sense, and means five states on the isthmus lying between New Granada on the south, and Mexico on the north, which, under the names of Costa Rica, Nicaragua, Salvador, Guatemala, and Honduras, confederated themselves when they became independent of Spain, and established a republic called the federal republic of Central America. In the convulsions of that region, that union has been dissolved; but the name acquired by it still hangs around those states, and they, and they alone, are the states described, politically, in books, geographies, and otherwise, as the states of Central America.

Now, did the negotiators use the name of Central America in its geographical sense, or did they use it in its political sense? Certainly in its *political* sense.

For, 1st. If they used it in its geographical sense, then it may as well be insisted that the convention embraces all between 7 deg. and 26 deg. of north latitude, as that it embraces all between 7 deg. and 22 deg. of north latitude, and this would be to make it embrace a part of the United States, which would be absurd.

2d. The geographical Central America, whether broad or narrow, embraces the regions which contain the *three* celebrated passes from ocean to ocean, viz: Panama, Nicaragua, and Tehuantepec; and if that be the sense in which the name Central America is used in the convention, then the stipulations are already made between the two nations for the construction and maintenance of canals or railway passages across all these routes. But the convention, on the contrary, expressly confines its care to the Nicaragua route, and postpones to a future day the making of

stipulations in regard to the two other routes of Panama and Tehuantepec.

3d. The term "Central American States," in the sixth article, is equivalent to and illustrates the meaning of the term Central America in the first article.

4th. The convention, in describing the territory which is to be made neutral, names two of the Central American states in the vicinity of the canal, Nicaragua and Costa Rica, and then adds, or *any* part of Central America—thus clearly implying that it was political Central America that was intended.

It was, then, not geographical, but *political Central America* that was included in the convention, and so the honorable senators must have understood it when they approved it, unless we suppose them to have been so indifferently informed that their opinions were of no value, which is not to be supposed for a moment.

5th. I shall endeavor to convince those honorable senators that their memories are still further at fault, and that, *when they approved the convention, they did not understand it to include British Honduras or the Belize, as its dependencies, which are the same.*

Like "Central America," the name Honduras also has a geographical sense and a political sense. *Geographical* Honduras is all Honduras from the borders of Guatemala to the Caribbean Sea, and includes Spanish Honduras and British Honduras—just as the name Virginia long stood for the whole Atlantic border from Carolina to Canada; but *political* Honduras is the ancient province or intendency of Spanish Honduras, as it was when it separated from Spain, and became the state of Honduras, and entered that federal republic of Central America; and as it came out of that federal republic on its dissolution, and as it has remained hitherto, and is now the *state* of Honduras; and that state, in every book or geography, and on every map, in every atlas, is divided and separated from British Honduras just as plainly and as broadly as Kentucky is divided from Virginia, or Alabama from Georgia, while British Honduras is in every such book and atlas marked and designated with the island before mentioned as a British colony; sometimes by the name of British Honduras, and sometimes by the name of the Belize.

I know, indeed, that Spain to the last insisted that Great Britain

had only a partial and limited right of occupancy. I know that the state of Guatemala set up the pretensions of Spain, and still insists upon them. I do not say that they are not just. I shall be glad if they prove so; but I know also that Great Britain equally claims to own British Honduras by absolute right, and that although she has two or three times been occasionally dispossessed in the varying fortunes of war, she has so claimed it since 1667, and has held it undisturbed since 1783, the period of our own acknowledged national independence. The Belize is a British town of two thousand five hundred people, and with its adjacent territory has been a colony near two hundred years, governed by British authority, and occupied by a British garrison. It is ecclesiastically connected with the British diocese of Jamaica, and from 1847 to 1850 the United States maintained a consul there, who, with their consent, received his *exequatur* from the Court of St. James. In short, practically, the Belize is as much a British town, and British Honduras as much a British colony, to the knowledge of the whole world, as Quebec and Canada.

Now, who supposes that Great Britain intended to renounce that town, post, and colony, under the vague and equivocal term of "any part of Central America?" No one! Who supposes that the United States stipulated for such a renunciation in terms so vague and uncertain? No one! It is not so that Britain resigns or the United States take dominion. The terms, "any part of Central America," then, did not include British Honduras, and so the honorable senators must have understood, if they knew the political condition of British Honduras as I have described it. That condition was known here; for on the 10th of May, 1849, a senator stated in debate here, that *four companies of British troops* had marched from the Belize into Yucatan, and that this was the act of the *colonial* authorities of Great Britain at the Belize; and he who made that statement was no other than the honorable Senator from Michigan, [Mr. Cass.]

6th. But, waiving for argument's sake all the points thus far made, I shall next show that the senators were not *ignorant of the construction officially given by Mr. Clayton to the convention until the 6th of January, instant, when they proclaimed it as a disclosure then obtained through the President's communication.*

The ratification was made on the 4th of July, 1850. On the

14th of that month the President transmitted to Congress a communication, which contained these words:

"A copy of the treaty concluded between Great Britain and the United States in regard to Central America is herewith submitted. Its engagements apply to all the five states which formerly composed the republic of Central America and their dependencies, of which the island of Tigre was a part. It does not recognize, affirm, or deny, the title of the British settlement at Belize, which is by the coast more than five hundred miles from the proposed canal at Nicaragua. *The question of the British title to this district of country, commonly called British Honduras, and the small islands adjacent to it, claimed as its dependencies, stands precisely as it stood before the treaty. No act of the late President's administration has in any manner committed this government to the British title in that territory, or any part of it.*"

This paper gave to the senators, just two years, five months, and twenty-two days ago, the same information which surprises, shocks, and alarms them now.

But, Mr. President, even this communication was only a reiteration of the same information before given; for on the 8th day of July, 1850, the following official exposition appeared in the National Intelligencer, together with the convention then just officially promulgated:

"The leading object of the treaty appears to be the establishment of a ship canal across the isthmus which connects North with South America, under the protectorate not only of Great Britain and the United States, but of all other nations which desire the right of passage through it from ocean to ocean on the same equal terms.

"In reference to political advantages connected with that treaty, it may be remarked that all the states of Central America, comprehending the immense extent of country from the Belize, commonly called the bay of Honduras, down to the northern boundary of New Granada, is made *neutral territory*. No government entering into this treaty can occupy, colonize, fortify, or assume or exercise any dominion over any part of the Mosquito coast, or any part of Central America, from the boundaries of the bay of Honduras and Mexico on the north, to those of New Granada on the south. The British title to the Belize the treaty does not in any manner recognize; *nor does it deny it*, OR MEDDLE WITH IT. *That settlement remains, in that particular*, AS IT STOOD PREVIOUSLY TO THE TREATY."

Senators who accuse secretaries of stupidity, or suppression and fraud, cannot be allowed to plead ignorance of official expositions in the official journals.

Sixthly, and last, I shall attempt to convince the senators that they, and the Senate, *did understand that the convention did not include British Honduras when they approved it.*

Mr. King, of Alabama, was Chairman of the Committee on Foreign Relations, and the proper medium of communication between the Senate and the Secretary of State. The Senator from Michigan tells us that Mr. King has stated to him that, "after the *quasi* ratification came from England, on the 29th of June, he had an interview with Mr. Clayton, who desired to know whether the treaty ought to be sent back to the Senate for its action, on that

conditional ratification." The only reason for sending it back to the Senate was, that the Senate might have not understood the convention as not including British Honduras, and so might object to the ratification of it, as thus explained by the negotiators. The correspondence between Mr. Clayton and Mr. King tells the result:

"JULY 4, 1850.

"DEAR SIR,—I am this morning writing to Sir H. L. Bulwer, and while about to decline altering the treaty at the time of exchanging ratifications, I wish to leave no room for a charge of duplicity against our government, such as that we now pretend that Central America in the treaty includes British Honduras.

"I shall therefore say to him, in effect, that such construction was not in the contemplation of the negotiators or the Senate at the time of confirmation. May I have your permission to add that the true understanding was explained by you, as Chairman of Foreign Relations, to the Senate, before the vote was taken on the Treaty? I think it due to frankness on our part. Very truly yours,

"JOHN M. CLAYTON.

"*To Hon.* W. R. KING, *U. S. Senate.*"

"JULY 4, 1850.

"MY DEAR SIR,—*The Senate perfectly understood that the treaty did not include British Honduras.* Frankness becomes our government; but you should be careful not to use any expression which would seem to recognize the right of England to any portion of Honduras. Faithfully your obedient servant,

"W. R. KING.

"*To Hon.* JOHN M. CLAYTON, *Secretary of State.*"

So the proper organ of the Senate reported that they perfectly understood that the convention did not include British Honduras. The accusing senators will not impeach the chairman; and if they do, I shall not go with them. I respect and honor that distinguished man—nay, sir, I love him. I have received injuries, many of them, here. The memory of them died in the hour in which they were committed. But I have received kindnesses, benefits too, and many of these were received at the hands of Willian R. King. Not one of these shall perish in my memory, until I give an account of them to his Creator and mine. And now, since those honorable senators have so broadly assumed to speak for us all, they will not now deny that they did not know what we all "perfectly understood."

Just what Mr. King advised was done by the secretary. He took effectual care not to use any expression which should seem to recognize the *right of* England to the portion of Honduras—that is, to British Honduras—which she possessed. That right remains just as it was before. Good or bad, it is not made worse or better by the treaty. As to the Bay of Islands, if it was in fact a dependency of British Honduras on the 4th of July, 1850, then the formation of a colony there is not a violation of the con-

vention. If it was not then in fact a dependency, then that transaction is a violation of the treaty. But in either case it has nothing to do with the present question.

The Senator from Louisiana, [Mr. Downs] in the very wantonness of censure, has supposed that not only the Senate, but the late President, General Taylor, was kept in ignorance of the conditions of ratification, and this upon the ground merely that General Taylor sickened on the 4th, and died on the 9th of July. But the Committee on Foreign Relations now appear to have known those conditions on the 29th of June, and the President may be presumed to have been intrusted by the Secretary with a fact that was officially communicated to the Senate. Whatever else might have been the errors or misfortunes of that administration, want of mutual confidence between the Secretary of State and his distinguished chief was not one of them. They stood together firmly, undivided, and inseparable to the last. Storms of faction, from within their own party and from without, beset them; and combinations and coalitions, in and out of Congress, assailed them with a degree of violence that no other administration has ever encountered. But they never yielded and never faltered for an hour. They went on firmly, and firmly united together in their great work of consolidating the then newly extended republic upon the foundations of universal liberty, and establishing its continental power on the foundations of commercial interests and republican systems. The administration which they conducted was beaten down not by human hands, nor by human words, nor by human votes; but it went down only under a providential visitation, that, if it had happened on the field of Monterey or at Buena Vista, would have either forever lost, or long postponed, the extension of our borders to the shores of the Pacific ocean. Those who have profited by political changes consequent on that sad event may listen unmoved to the censures which for two years past have howled, and still are howling, equally around the Secretary of State in his retirement, and over the veteran and war-exhausted President in his grave. Let me, on the other hand, who had some humble portion of their confidence, and knew their fidelity to each other and to their country, perform, though it may be alone, the duty of vindicating them against the clamors of prejudice and error.

And let me say to the Senator from Louisiana, and to the Sena-

tor from Ohio, and even to the Senator from Michigan, that, long as their careers respectively may be protracted, even, as I hope they may, to the ends of natural lives, in ripened age, and diligent and devoted as I know they are, yet that it will be happy for them, and for us all, if even then they shall have established claims upon the affections of their country, and the gratitude of mankind, equal to those which were perfected in that administration—broken off in its seventeenth month, but wisely conducted for that short period by John M. Clayton, the eminent statesman of Delaware, and presided over by Zachary Taylor, the hero who indicated and opened the way of the American armies to the golden gates of Mexico.

DEATH OF SENATOR UPHAM.*

JANUARY 15, 1853.

Mr. President,—How true it is that every day we spend here brings some fresh event to impress upon our minds the fraternity of the states and the comprehensiveness of the republic! We began the week with surveying our interests in the Caribbean Sea; we went from thence to examine the defences of the youngest member of the Union on the Pacific coast; and now, at the end, we are called to make a visit of condolence with the eldest of the adopted states in her eastern mountain home.

Last summer, I stood beside the grave of Ethan Allen, on the shore of Lake Champlain. The lightning had descended and had riven the native marble slab which covered it, as if nature herself had been willing to mark her appreciation of the free, yet turbulent character of the founder of Vermont, and captor of Ticonderoga. But the rudeness and turbulence of the earlier age of Vermont have passed away, while her intelligence and love of freedom remain, increased and refined by art and learning.

William Upham was of Vermont, a consistent exponent of her institutions—the most equal institutions enjoyed by man in this

* Remarks on the death of Hon. William Upham, a Senator from Vermont, who died in Washington, January 11th, 1853.

country and in the world. He was a man of strong and vigorous judgment, which acted always by a process of sound inductive reasoning, and his compeers here will bear witness that he was equal to the varied and vast responsibilities of the senatorial trust. He was a plain, unassuming, unostentatious man. He never spake for display, but always for conviction. He was an honest and just man. He had gotten nothing by fraud or guile; and so he lived without any fear of losing whatever of fortune or position he had attained. No gate was so strong, no lock so fast and firm, as the watch he kept against the approach of corruption, or even undue influence or persuasion. He exacted little for his own state, but, like her, was liberal to all others. His national policy was the increase of industry, the cultivation of peace, and the patronage of improvement. He adopted his opinions without regard to their popularity, and he never stifled his convictions of truth, nor suppressed their utterance through any fear of power or of faction; but he was, on the contrary, consistent and constant,

> "As pilot well expert in perilous wave,
> That to a steadfast starre his course hath bent."

I was honored with a place in his friendship, and Vermont is intimately related to the state from which I come; and, therefore, I have thought it my right and duty to speak a just panegyric over his remains. I wish that the wreath I have contributed were more fit to adorn the bier and grace the tomb of so true a representative, and so upright a statesman.

NOTE.—For a continuation of Speeches and Debates in the Senate of the United States, see Vol. III

FORENSIC ARGUMENTS.

FORENSIC ARGUMENTS.

THE LAW OF LIBEL.*

If your honors please, one of the most influential presses of this country has expressed the opinion, as appears in the present record, that if an action for libel be brought against an editor—no matter how true the publication may be—yet, "as the law is now expounded and administered by the Supreme Court, the writer has no earthly choice but to bow his neck to the yoke, pay all that may be claimed of him, and publish whatever humiliations shall be required of him, or else prepare to be immediately ruined."

I trust to be able to vindicate the law and this court from this censure, and from the censoriousness of public opinion on the same question.

Certainly it is true, notwithstanding legislative effort to introduce simplicity of pleading in Courts of Justice, that the defence of the action of libel in this state has come to be considered so technical, complicated, and difficult, that there is a general opinion that articles alleged to be libelous are defended with more difficulty now than formerly, and with more difficulty in this country than in England.

I trust to be able to show that these difficulties result from certain *obiter dicta* which have fallen from the bench in regard to pleadings, and to similar judicial expressions in regard to the nature and qualities of libels.

* Argument in the Supreme Court of New York in the Cause of Horace Greeley and Thomas McElrath, ads. James Fenimore Cooper, for Libel. May 14, 1845.

The court has decided in many cases that each plea must answer the whole matter, and all the matters contained in the count to which it relates, even though the matters contained in the count are separable and separately and distinctly charged as libels.

Secondly. That the defendant cannot demur to one separate and several part of libelous matter set forth in a count, and deny or justify other several and distinct matter in the same count, but must demur to the whole count, or plead to the whole count.

Thirdly. For a long series of years the court held that when a defendant pleaded the general issue with a special plea, to which the plaintiff replied and the defendant demurred, then if the replication was held good, the defendant could not fall back upon the declaration, although it was confessedly defective; because, as was said, that would be allowing the defendant to do indirectly what he could not do directly, *plead* and *demur* to the same count. The Court has receded in part from this rule in the case of —— 16th Wendell.

[Here Justice Beardsley interposed and said, that although there were such *obiter dicta*, yet it has always been held that the defendant could always, in all cases, fall back and attack the declaration.]

Mr. Seward proceeded: I am grateful for this intimation. I have found those *obiter dicta* disclaimed in part, but the rule retained, nevertheless, with qualifications. But I will now consider the rule as abolished altogether.

I now beg leave to refer your honors to several cases which show that as the law of pleading in libel cases always was and yet remains in England, the two former principles, as well as the last, are erroneous, and that there, at least, the defendant may plead the general issue to the whole declaration and then in separate pleas answer any particular part of any particular count, viz: Wendell's Starkie, 1, 634; Tidd 603; Stiles vs. Nokes, 7 East, 493; Clarkson vs. Lawson, 6 Boyle, 507; 2 Dowing's P. R. 641.

These cases were collected to show that the rules in question and which are maintained here, are a departure from the law of libel in England.

But a case which has been decided and published since this demurrer book was made, supplies the most conclusive and satisfactory proof of this position. In the case of Root vs. Woodruff, 6 Hill 421, the present learned Chief Justice of this court says: "Every plea in bar must contain a good answer to all it professes

to answer, or it will be bad, but as I understand the rule in England, the plea need not go to the whole count, it there be other pleas which cover the residue. In trespass without pleading, any one plea going to the whole count, defendant may by one plea justify the breaking of the close and by another the seizing of the goods. It is enough that each plea is good as far as it goes, and that all of the pleas taken together cover the whole count. I shall not go over the cases, but will refer to one by way of illustration. In Clarkson vs. Lawson in Bingham, 587, the action was for libel, and there was first a plea to the whole declaration, and then a plea of justification as to a *part* only of the libel. The court held that as the whole declaration was answered, and as the charge complained of was severable in its nature, the plea to a part only of the libel was good. But when a part of the declaration remains wholly unanswered, the plaintiff must have judgment by *nil dicit* as to that part, and if he demurs or answers over the whole, the action will be discontinued. We have departed from these rules in two particulars.

1st. Every plea in bar must not only contain a good answer so far as it professes to go, but it must answer the whole declaration or count to which it is pleaded. 2d. If the whole be not answered, the plaintiff may demur, and the action will not therefore be discontinued.

Since the departure is admitted by the court, I trust it is neither presumptuous nor disrespectful to pray the court to return to the ancient law, and I submit the following reasons for a return :

First. That the oldest law, until changed by legislative power, is not merely the better, but the right and the only law.

Secondly. That the law in England and in this state will conform, and thus the same law will be universal; while the new rules established here are neither universal here, nor at all in conformity with the law as established in a country governed by the same jurisprudence.

Thirdly. The new rule is inconvenient and impracticable. The plaintiff may combine separate causes of action in one count, and distribute the same causes in any number of counts; yet the defendant is not allowed to answer fully as to each cause separately and distinctly, and confine himself to such answer in a single plea, but he must answer in each plea at the expense of infinite amplifi-

cation and repetition every cause of action contained in the same count.

Fourthly. Although the plaintiff may combine one good and one bad cause of action in the same count, the defendant is not allowed in that case to deny or justify the one and demur to the other, but he must demur to both or plead to both; that is, he must confess a cause of action to be good which is manifestly bad, to obtain an opportunity to deny or justify a cause which he knows is false in fact.

What is this but to deprive the defendant of the right guarantied to every man, to have the preliminary judgment of the court whether he shall be held to answer?

And what mode of defence is given in lieu of the demurrer which is denied in such a case? Why, on the trial he may object against evidence being given on a bad count. But are we not entitled to the judgment on the whole count? If we are told we may move in arrest of judgment, we answer that the verdict cures many defects which would be bad on demurrer.

Having shown these departures from the English jurisprudence in regard to pleading in actions for libel, it will be my duty to endeavor to show a like departure in regard to the nature of libel.

I humbly submit that the first count in this declaration is bad, because the words complained of do not constitute a libel.

The words are—

"At all events, having published the letter excepted to, as a *matter of intelligence without any sort of feeling* toward Mr. Cooper, (the said plaintiff meaning) but such as his conduct in the case seemed to excite, we have at all times stood ready to publish cheerfully any correction or contradiction he might choose to send us. He (the said plaintiff meaning) chooses to send none, but a suit for libel instead. So be it then. Walk in, Mr. Sheriff.

"There is one comfort to sustain us under this terrible dispensation. Mr. Cooper (meaning the said plaintiff) will have to bring his action (meaning said suit for libel) to trial *somewhere*. He will not like to bring it in New York, (meaning the city of New York) for we (meaning said defendants) are known here. Nor in Otsego, (meaning the county of Otsego) for he (meaning the said plaintiff) is known there, (thereby meaning that the said plaintiff, *in consequence of being known* in the county of Otsego, was *in bad repute there*, and would not, *for that reason*, like to bring a suit for libel in said county of Otsego.")

First, and generally a perusal of the declaration, shows its absurdity. The plaintiff complains of the defendants that they have maliciously conceived and contrived to injure him in his good name, fame and credit, and to bring him into general contempt and ignominy, and for this purpose have *falsely*, wickedly and

maliciously published a false, scandalous and malicious libel, containing false, malicious and defamatory matter. And what is this matter that is thus wicked and malicious? Here it is: "Mr. Cooper will not like to bring an action for libel to trial in Otsego County, because he is known there." Oh most lame and impotent conclusion to such a swelling prologue!

The libel reiterates and applies to the plaintiff a truism stamped with even divine truth, and if the sentiment complained of be *libelous*, then the Methodist Book Concern, and the Society for Propagating the Gospel, are dangerous engines. "A prophet is not without honor but in his own country and among his own kin, and in his own house."—*Mark* 6: 4. "For Jesus himself testified that a prophet had no honor in his own country."—*John* 4: 44.

The sting of the libel in this case, if there be any, is in intimating that a party bringing an action would prefer a trial where the piques, the rivalries and prejudices which assail every man at home could not reach him.

If this harmless language shall be considered libelous, it must be only on the ground of its falling within some modern definitions of libel which have extended the action of libel far beyond its ancient, just and narrow limits.

In the case of the People *vs.* Croswell, 3 J. C. 354, Hamilton *arguendo* said, quoting Lord Camden, "I have been unable to find a satisfactory definition of a libel, and I want to submit one: A libel is a censorious or ridiculing writing, picture or sign, made with a mischievous and malicious intent toward government, magistrates, or individuals." The Supeme Court, in Steel *vs.* Southwick, 9 J. R. 215, approved and adopted this definition, and said it was drawn with the utmost precision.

[Mr. Justice Beardsley here inquired whether the counsel intended to question that definition which had been so long and universally approved of. Mr. Seward replied, that he confessed the temerity of thinking that the definition, at least as it is generally understood, enlarged the scope of actions beyond what was the settled Common Law in England and now in America.]

But adopting even Hamilton's "definition," it would not embrace the present libel. It is not a censorious or a ridiculing writing. It *reflects* upon the plaintiff, certainly, but not severely or censoriously, while it neither affects nor betrays any sentiment of ridicule.

Aware of this, the plaintiff seeks to insert a sting in the publication, which without that aid is harmless. And this is done by an *inuendo*. The inuendo is that the defendants meant that the plaintiff was in *bad repute* in Otsego County. But an inuendo cannot extend the sense of the words, unless by reference to some other matters which are also spread upon the record by a *colloquium*. But here is no *colloquium*, and of course the inuendo falls, unless the true, legitimate, and only meaning of the libel is what is charged by the inuendo. (1 Starkie, 375, Barbour's Com. Co. 20.) Now no inuendo is necessary or proper, because the words are neither ambiguous nor are they alleged to be so. They mean just what they say, that the plaintiff is known in Otsego County, and therefore would not like to bring an action there. "Their offending hath this extent, no more." Their meaning cannot be well expressed by any equivalent or parallel words—and certainly least of all by the phrase that the plaintiff is held in bad repute in Otsego County. They may perhaps imply the idea that the plaintiff is not popular, not favored among the citizens of Otsego County. And is it libelous to allege, at least of a private citizen who neither holds nor seeks office, that he is not popular, or is unpopular in Otsego County?

Again: the pleader, after adopting the word repute, extends it to mean reputation, and so this inoffensive passage is tortured into a charge of such bad *reputation* against the plaintiff as ought to disqualify him for the society of his fellow-citizens. Common sense revolts from such a construction. The inuendo then falls, and we find the words in their original form and connection. Does the law of this land declare it libelous to write of a party litigant that he would not like to bring an action in a certain county because he is known there? I humbly contend for the contrary. Every libel is a misdemeanor as well as a private wrong. When this court shall decide that this action can be maintained for these words, the law is pronounced that the defendants are guilty of a misdemeanor, which cannot be expiated without fine or imprisonment, or both. And who will believe for a moment that such a principle is law, or who believing it could respect such a system of criminal jurisprudence.

Thus far I have considered the libel in the light of Hamilton's definition, but I beg leave now to submit, first, that this definition is not a part of the law of this state, and, secondly.

that it conflicts with the long and well established law of libel. Its supposed precision consists in such an enlargement of terms as will embrace almost every form of written censure, without raising any distinction between merely harmless vituperation which the law spares and those written calumnies which the law condemns and punishes. This will appear by comparing this celebrated modern definition with the more elaborated ancient definitions which may be found in elementary writers and acknowledged text-books. Starkie says: "Every man has a legal right to be protected against false and wilful communications, whether *oral* or *written*, made to his prejudice or damage. But the law which recognizes this right also limits its extent. This is done by defining what communications shall be regarded as *substantially* injurious and therefore actionable, though no special damage or loss can be shown, and by leaving all other cases to the operation of the general principles of law. And because the libel tends immediately to the injury of the party, presumption stands in the place of proof." 1 Starkie, 14.

I insist, then, that to render a publication actionable, it must be "*Defamatory*." This is an ancient and strong word contained in the definition of libel given in Hawkins' Pleas of the Crown: "So also to render words actionable per se, they must be not only *defamatory*, but calculated to vilify a man, and to bring him, as the books say, into *hatred*, *contempt*, and *ridicule*." Thorly *vs.* Kerry.

Similar to this is the definition of libel given by Bacon: "A malicious *defamation* of another in writing or by signs or printing, tending either to blacken the memory of one who is dead, or the reputation of one who is living, and thereby exposing him to Public Hatred, Contempt or Ridicule." So also a libel is defined in 1 Bulstrode, 40, to consist of slanderous words tending to the infamy, discredit, or disgrace of a party.

From these definitions it is justly inferred by Starkie, that an imaginary or causeless fear of damage is not a ground of action. (1 Starkie, 25.)

A review of the cases will show that these old definitions have been practically retained and adhered to; notwithstanding, judges have in delivering their opinions approved the less severe and rigid definitions of Blackstone and Hamilton.

Thus, although this Court declared its approval of General

Hamilton's definition in the case of Steele *vs.* Southwick, 9, J. R, 214, yet the libel in that case was clearly so gross and severe as to fall within the older descriptions of that offence. The libel was in these words: "Our army swore terribly in Flanders, said Uncle Toby, and if Uncle Toby were here now, he might say the same of modern swearers. The plaintiff is no slouch at swearing to an old story." Here was a colloquium, and the Court justly said that the libel imported that the defendant swore with levity and rashly and inconsiderately, without due regard to the solemnity of the oath, or to the truth or accuracy of what he said. Surely, there was no need here for a new definition. So also in the important case of Riggs *vs.* Denniston, 3, J. C., 205. This court decided that charges "that the plaintiff was a misanthrope, a violent partisan, stripping unfortunate debtors of every cent; then depriving them of the benefit of the act made for their relief under the most trifling pretences, wilfully and knowingly perverting the law, (he being a magistrate,) for illegal and oppressive purposes," were libelous. Certainly, this is very different from adjudging that any paper that is censorious or ridiculous, being written for mischievous purposes, is a libel. But I confess my amazement that Chancellor Kent, after pronouncing these words libelous, expressed a doubt whether the law would allow them to be justified—as if the truth was not always a justification, at least in civil actions. Such and for so long has been the judicial severity of this state in regard to the law of libel. But the Supreme Court, when adopting Hamilton's definition, refers to the case of Villars *vs.* Mosely, C. B. 2 Wilson, 403, decided in 1769. The libel there was:

> "Old Villars! so strong of brimstone you smell,
> As if not long since you had got out of Hell;
> But this damnable smell I no longer can bear:
> Therefore, I desire you would no more come here,
> You old stinking, old nasty, *old itchy, old toad*—
> If you come here any more, you must pay for your board;
> You'll therefore take this as a warning from me,
> And never more enter these doors while they belong to
> "J. P."

This libel exhibits neither good taste nor good poetry; but the action was not brought on that ground. Now it is worthy of especial remark, that the only part of all this vile and offensive vituperation, censorious and ridiculing, and contemptuous as it all was, that was complained of, was the imputation that the plaintiff had a contagious disease, which, in the language of Justice Goold, tended to exclude him from all society.

Having thus ascertained what the law of libel was in 1769, I beg leave now to remind your Honors that, in the early stages of that law, there was no distinction between *verbal* and *written slander*. No written words were actionable that would not have been actionable if spoken. I will not go about by a tedious way to prove this; it is fully established in the case of Thorly *vs.* Kerry, 4 Taunton, 355, decided in 1812. The libel charged the plaintiff with having written a scurrilous address, &c. The following points were made by Sir James Mansfield, in delivering the opinion of the court:

"1st. That there being no *offence* charged in the publication, an action could not have been maintained for such words spoken.

"2d. That upon due consideration of the whole subject, there was no difference in reason or principle between oral and written slander.

"3d. That the rights of the citizen would be sufficiently guarded by applying to libels the rules established in cases of verbal slander.

"4th. That originally no difference was known, and now it was always discussed, in actions for libel, whether the words would bear an action if *spoken*.

"5th. That the argument that a libel tends to promote a breach of the peace is altogether *irrelevant*.

"6th. That the other argument that written slander evinces more malignity of purposes than that which is verbal, is also irrelevant, because the action is sustained on the ground not of malignity, but of injury to the party.

"7th. That the other argument that a libel is more diffusely published is also without weight, because in the change of times and manners the reason has failed.

"8th. That the difference now made in the law in regard to written and verbal slander was first established in the time of Charles the Second. That if it were a new question, this difference ought not to be made, yet that it must now be maintained, because it is enforced by authorities too inveterate to be cast off."

Justice Beardsley. "Can we go back and subvert these authorities? Does the counsel maintain that we ought to do so?"

Mr. Seward. I have not the presumption to ask so much. Although I humbly insist that what was the common law at first, is, and ought to be the common law now, until changed by legislative power. And I think it not above the power nor unworthy the wisdom of this high tribunal to restore the ancient law. Such restorations have been made in other instances. Sixty years elapsed after the King's Bench sustained trover for a negro slave before the same high judiciary, solemnly declared that a slave could not breathe the air of England. The House of Lords, in the case of Daniel O'Connell, have restored the right of challenge in jury trials, after it had been judicially abolished for I know not how long a period.

But if I may not ask so much, my argument will hold at least against carrying any further the confessedly unreasonable and oppressive distinction between verbal slander and libel.

The spirit of the law of libel, as I contend it should be, is maintained in the courts of South Carolina. The Supreme Court of that state decided in the case of the State *against* Farly, 4 McCord, 317, that the following letter was not libelous: "As Mrs. Raynal says she has been most cruelly censured without a cause, which is absolutely false, I would advise her to beware, lest facts, which are stubborn things, be brought to light, and you will then see who you keep under your roof. She need not go among her female friends and say she has been cruelly censured without a cause, as, from her general character, which is perfectly and universally known, we are sure to hear all she says." The court decided that the letter contained in itself no specific charge of any thing immoral or criminal, which was calculated to render the prosecutrix ridiculous, or to exclude her from society, and therefore was not libelous.

Such, too, is the spirit of adjudications in Massachusetts, for I find the learned opinion of Sir James Mansfield before cited, reviewed and approved in the case of Clark *vs.* Birney, 2d Pickering, 116.

Mr. Seward here cited the case of Robinson *vs.* Jermyn, in Exchequer in England, 1 Price 11, where an association, who kept a Cassino room, published a notice that the Rev. Mr. Robinson, a clergyman, was not deemed a proper person to be associated with, and therefore he was excluded from the room. Graham, Baron, declared that he agreed with Sir James Mansfield, and could not consent to extend to libels severity which was not applied to verbal slander. This severe discrimination began to be enforced in the Court of Star Chamber, during the time of Elizabeth, who sustained prerogative with a high hand, and it was perfectly established during the odious reign of the second Stuart.

Justice Beardsley: "Can we receive a proposition to restore the old law of libel, any more than we can to open the question whether an action of assumpsit lies on a promissory note? Has not this whole question been settled since Lord Coke's time? I put the question to the counsel."

Mr. Seward: I will reply to your honor in the language of Lord Coke. Coke, as Attorney-General, was an advocate of the utmost rigor and severity in the law of libel. When he became a judge, and one day out of every fourteen the court was engaged in slander suits, the case of Crofts *vs.* Burr came before

the court. The words were, "Sir Herbert Crofts keepeth men to rob me." Lord Coke said: "We will not give more favor unto actions on the case for words than of necessity we ought to do when the words are not apparently scandalous." These actions being now too frequent.

I was contending, if your honors please, for the distinction between words of mere censure or vituperation and those which necessarily tend to degrade a party. Such a distinction was recognized in the case of Forbes *vs.* King, (1 Dowling, P. C. 672.) The defendant, writing of the plaintiff, called him his "Man Friday." This was held not libelous, without an innendo that the defendant thereby meant to degrade the plaintiff.

Having thus stated what rules I think ought to be applied in determining whether words are actionable, I return to examine the libel complained of here. This libel charges no act criminal or immoral, or tending to degrade the plaintiff, or to exclude him from society. Let me illustrate the absurdity of the law of libel, if this publication be adjudged libelous. If Horace Greeley should *say* of a woman—a bereaved and lone woman—that she is an adulteress, she has no action; but if he *write* of James Fenimore Cooper, a man whose fame pervades perhaps the civilized world, that he is known in Otsego county, and therefore would not prefer to lay the venue of this cause there, then he is guilty of a libel, and liable to be punished civilly and criminally for each and every several copy of the Tribune which contains the atrocious publication. Such absurdities may be declared and adjudged to be law, but who will credit, or crediting them, who can respect the jurisprudence of the country that adopts them?

But again; what if we do write of the plaintiff that he is held in bad repute in Otsego county, how or why does it follow that he is injured? Does he live there? That is not averred. Has he wife, children, family, or friends there? No such thing is averred. If held in disesteem or disrepute in Otsego county, how can that impair the fame of a man who, for aught that appears on the record, is a cosmopolite, and has a home as comprehensive as his fame?

The next point in our case is that the plea to the first count is good. The substance of the plea is,—

"The defendants put in several pleas, and, in relation to the first alleged libel, aver that plaintiff, on 26th November, 1841, caused to be printed in the Albany Argus, a

notice charging on the defendants the publication of false statements; that said words published by them were in reply to, and commenting on, said notice; that plaintiff, for ten years, was known to many good citizens of Otsego county, and had the reputation there of a proud, captious, censorious, arbitrary, dogmatical, malicious, illiberal, revengeful, and litigious man, wherefore he was in bad repute; that by means of plaintiff being in such bad repute there, plaintiff would not like, and did not like, to bring action against defendants for words, &c., in the county of Otsego."

I am obliged to concede that if the declaration be bad, then this plea must be also bad. My argument, therefore, is, under favor, that the plea is sufficient if the declaration be good.

First—the plea justifies the publication. But my learned adversary says that the attributes applied to the plaintiff in the plea are merely foibles. This is singular indeed, that PRIDE, alleged in this plea, is a *weakness;* censoriousness is a fault; dogmatism, malice, and revenge are blemishes; and even illiberality and litigiousness are only foibles. Yet, in the plaintiff's declaration, mere want of generosity, or of kindness, or of the polish of the drawing-room, is an immorality and an offence.

In truth, the plea is more severe than the libel. The libel only charges the plaintiff with being known in Otsego county, or at most, with being unpopular there. The plea affirms that he is known there unfavorably as to all the points by which the esteem of his fellow-citizens could be conciliated.

The plea answers the inuendo, which is that the plaintiff is held in bad repute. Certainly no man need to wish his enemy a worse reputation.

But it is contended that the plea is bad, because it avers no acts of misconduct showing that the plaintiff deserved to be held in such bad repute. But the accusation is not of acts, but of repute, and must be proved true, not by specific acts, nor by conduct, but by repute. Proof of specific acts, offences, or errors, would not be allowed. (Briggs *vs.* Denniston, 3 J. C. R.; 11 Price, 225.) Suppose we had pleaded that the plaintiff had committed a crime, and thereby had forfeited and lost his character, or had pleaded acts showing a want of kindness, gentleness, and courtesy to his neighbors, such as denying them access to his beautiful grounds on the shore of the Otsego Lake, or in the forest where Leather Stocking held his retreat—should not we have been told that we had not accused the plaintiff of these acts in our libel, and should not escape from responsibility for what we had charged by bringing new accusations?

I pass over the third plea, which is defended upon the same general grounds.

The second count of the declaration sets forth and insists upon three several libels. The first of these is as follows:—

"Knowing what we positively did, and do, of the severe illness of the wife of Mr. Weed, and the dangerous state of his eldest daughter, at the time of the Fonda trials in question—regarding them as we do—the jokes attempted to be cut by Fenimore over their condition—his talk of the story growing up from one girl to the mother and three or four daughters—his fun about their probably having the Asiatic Cholera among them, or some other contagious disease, &c. &c., however it may have sounded to others, did seem to us rather inhu—Hallo there!—We had like to put our foot right into it again, after all our tuition. We mean to say that, considering that just the day before Mr. Weed had been choked by his counsel into surrendering at discretion to Fenimore, being assured by said counsel that, as the law is now expounded and administered by the Supreme Court, he had no earthly choice but to bow his neck to the yoke, pay all that might be claimed of him, and publish whatever humiliation should be required, or else prepare to be immediately ruined by the suits which Fenimore and Richard had already commenced, or were getting ready for him; considering all this, and how much Mr. Weed had paid and must pay towards his subsistence—how keenly Weed has had to smart for speaking his mind of him—we did not think that Fenimore's talk at this time and place of Weed's family and of Weed himself, as a man so paltry that he would pretend to sickness in his family as an excuse to keep away from court, and resort to trick after trick to put off his case for a day or two—it seemed to us, considering the present relations of the parties, most ungen—There we go again!"

We affirm, if your honors please, that this count also is bad, and that the words are not libelous.

The plaintiff seeks to make a case by the averment that *inhu* was meant for inhuman, and that *ungen* was meant either for *ungenerous* or *ungentlemanly*.

Now the inhumanity alleged is defined, and it was not inhumanity. It was at most only a want of magnanimity. The plaintiff took a default against Thurlow Weed, certainly under very extraordinary circumstances, but still he exercised a legal right, and that exercise, though it was not to be approved, was not inhuman.

The other innuendo is even more unfortunate. The plaintiff undertakes to tell the court what the defendants meant, and avers that they meant one thing or some other thing; but his object was to conclude the defendants by defining one meaning only. Suppose the court render judgment against the defendants, for what are damages to be rendered for denying to the plaintiff the generosity of a millionaire or the graces of polished life? *Ungenerous or ungentlemanly*—one or the other these defendants must have meant; but the plaintiff, although at liberty to choose, cannot determine between them. Either will sustain an action, he thinks, and therefore either will do. Like Major Macheath, in

the Beggar's Opera, when his first wife appeals to him, "Am I not your lawful wife," and his newly married spouse says, "Shall I not claim mine own," the Major throws a hand to each and sings, "How happy could I be with either."

But suppose we adopt the former and understand the libel to charge the plaintiff with having acted ungenerously. Generosity is not a duty or moral obligation. We are required to be just, not to be generous. No action will lie for accusing a man of being deficient in a virtue that the law does not expect a good citizen to possess. Try the other meaning, *ungentlemanly*. The law does not expect or require men to be gentlemanly, or regard them as such; or at least before a plaintiff can receive damages for being charged with a want of gentleman-like conduct, he must aver that he is a gentleman; and this declaration contains *no such averment*. Now suppose a chimney-sweep had brought an action on such a charge, could it have been sustained? Certainly not; and yet there is one law and rule of justice for all classes and for all men.

If this action be maintained it will be the first instance in which it has ever been adjudged in this country that it is libelous to deny to any and every man the character and qualities of a gentleman and a man of magnanimity. Then we can hereafter no more write of the living than of the dead, except to praise and magnify them. I leave it to your honors whether this would promote either good principles, good morals, or good manners.

I pass the second libel contained in this count which is a repetition of the words complained of in the third count.

The last libel complained of is as follows:

"Fenimore (meaning the said plaintiff) closed very effectively with an appeal for his character, and a picture of the sufferings of his wife and family—his grown-up daughters often suffused in tears by these attacks on their father. Some said this was mawkish, but we consider it good and think it told. We have a different theory as to what the girls were crying for, but we won't state it, lest another dose of Supreme Court law be administered to us," (thereby meaning that the said plaintiff, by some unworthy and disreputable conduct, was the cause of affliction and tears in his family.)

I admit that it was not in the most refined taste thus to bring the plaintiff's wife and children before the public. But it was not the defendants who committed this impropriety. It was the plaintiff himself who brought those respected ladies before the public, and in a speech full of bitterness and reproach paraded them in their sadness and "suffused with tears" before the jury at Ballston Spa, to swell a verdict by their agony and tears.

They accomplished the purpose for which the husband and father brought them upon the stage so unfit for their action. The verdict rose in consideration of their grief and sorrow to the required amount—it was paid by the defendants, and they gave their report of the trial as they lawfully might. Look at that report, and say whether it is not expressed with manly courtesy and delicacy that had not been deserved by the plaintiff. Never was man so injured, more tolerant, more forbearing in the exercise of a just retaliation. And what is complained of? Why, that the defendants said they had a different theory to account for the alleged grief of the young ladies. Could any more trivial complaint engage the attention of this grave tribunal?

Well, if this be calumny, who is calumniated? If the calumny be injury, who suffers? Certainly not the plaintiff, but the ladies.

But my adversary insists that the words are libelous because the defendants decline to give their theory through fear of a libel suit. True, but the defendants say at the same time, that, as the law is administered, the truth, however harmless, is equally libelous with false and malicious accusations, so they did not mean to confess that their theory would have justly involved the consequences of a libel suit.

And what is the sting found in this harmless *jeu d'esprit*. That the defendant meant to impute to the plaintiff some unworthy action or misconduct whereby his wife and children were afflicted. This *inuendo* must be rejected unless it be the clear and only legal meaning of the words published. Now the words would bear equally well an entirely different explanation. May it not have been some unkindness of the father, neither unworthy nor disreputable, that grieved his children—might it not have been some domestic misfortune or calamity? Suppose it were disappointment in love? Certainly the publication of such a theory would not have been libelous, and if the publication would not, declining to publish it would have been innocent: and if it afforded any cause of action the action would have accrued to the ladies and not to their father. I dismiss here the consideration of this libel, and revert to the pleas interposed in answer to this count. The plea to the first of the libels in this count is in substance as follows:

"Defendants by leave, &c., say that plaintiff ought not to maintain action, &c., because they say defendants were editors, &c., and the words constituted part of an article giving an account of plaintiff's suit against defendants, tried at Ballston Spa, on the 9th Decem-

ber, 1842, and aver that on such trial plaintiff, in presence of Judge Willard, &c., spoke words [substantially same as alleged.]

"Defendants aver that at the time of such trial, Weed's wife and children were sick, not of cholera, &c., and that Weed was in *consequence* detained, these things being known to plaintiff.

"Defendants aver that previous to said speaking, plaintiff had brought three actions against Weed, one against Hoffman & White, and two against all—in one of which (Weed, defendant,) plaintiff recovered $55 on 13th April, 1842; in another against all, $87 on 14th September, 1842; another noticed for trial as above; that plaintiff had on 1st December, 1842, sued out three writs against Weed, White, &c., all prosecuted by R. Cooper, Attorney, &c., who had them in his possession, and shewed them by plaintiff's direction to H. Hammond, Counsel for Weed, who insisted that Weed should compromise, &c.; who did submit matters between himself and plaintiff to D. Cady, and agreed to sign and publish what he should direct; all which was known to plaintiff when he addressed jury, &c.; wherefore defendants published.

"Defendants ready to verify, and pray judgment.

This plea is good and sufficient because it justifies all the matter contained in the libel. The counsel complains that the sums paid by Thurlow Weed are small and inadequate to justify the allegation that Weed contributed essentially to the plaintiff's subsistence. They may seem trifling sums to him, but this is a natural difference of estimate between the party who paid and the recipient. Again, the plaintiff's counsel says that it is not shown that his remarks on the trial at Ballston were impertinent. But it is shown they were *wilfully false*. And falsehood is impertinent in every action, in every court, in every relation, and in every place.

The plea to the last libel is in substance as follows:

"6*th Plea. Fo.* 80–89.—Defendants by leave, &c., say that plaintiff ought not to maintain action, &c., because they say that defendants were editors, &c., and aver that at a circuit court on 9th December, 1842, at Ballston Spa, in a suit between them, plaintiff addressed the jury, and did say words [to same effect as charged], and defendants published a true account. Defendants aver that it is not true that the family were suffused in tears for reasons stated by plaintiff, but say that before that time plaintiff had commenced various actions on frivolous grounds: on 1st July, 1840, procured indictment against J. W. Webb—on 1st November, 1842, commenced three actions against T. Weed —on 1st December, 1842, two against Weed, White & Hoffman, and one against Hoffman & White; and had, on 1st December, 1842, sued out five capiases against Weed.—And these things being known, &c., plaintiff fell into disesteem, &c.; and these proceedings and disesteem were, *to wit*, on the day plaintiff addressed jury, known to his wife and family—and his wife *and daughters and family* were for this cause grieved, as well they might; wherefore defendants published."

This plea is a sufficient answer. It shows a theory why the plaintiff's wife and daughters were grieved and afflicted, and wept. The counsel complains that we have not adopted his explanation. It is enough that we set forth our own and are obliged to prove it, and must stand or fall by the plea at the trial. The learned counsel says that the facts we have assigned are not adequate for such deep domestic affliction. We reply that the question is not whether these respected ladies rationally

wept for such a cause, but whether they did in fact weep from that cause. I may not speak for them, but I confess that, in far distant lands, I heard and knew the fame of the author of "The Spy," and of "The Pioneers." I rejoiced as his countryman, and as his countryman I have sorrowed and been afflicted by the undignified attitude the distinguished author has held in the litigation described in this plea. And if I and others of his fellow citizens have thus deplored his infatuation, it is not unnatural to suppose that the same cause has brought regret, sorrow, and even tears into that domestic circle where his great fame is so greatly and so fondly cherished.

I will not detain the court with further reply to the criticisms on the pleas. They will be found fully answered in the points submitted to the court.

In conclusion. I have shown in the first place that certain departures as to the law of pleading, which took place long ago in this court before any of its present members had seats on the bench, have rendered the defence in actions of libel complicated, dangerous and difficult. Secondly, that *obiter dicta* which have fallen from the bench have extended still wider the broad and dangerous definitions of libel which in an unfortunate age were adopted in England, and have rendered it next to impossible to justify any libel, however true.

I beg leave with all deference and respect to implore a review of the law in all these respects. Actions of libel are now at least comparatively unnecessary. A virtuous and humble life carries with it its own vindication. And if this be not enough, the press has the antidote to its own poisons. If it sometimes wounds, it can effectually heal. An eminent citizen who once presided in this court commenced public life with actions in defence of his character. Assailed as he thought in the evening of his life, he appealed to the press, and his vindication was complete and successful. The licentiousness of the press has impaired its power to defame—and the worst libel ever published would be effectually counteracted by a publication in the simple words, "I am not guilty," if it bore the signature of James Milnor, or of one who like him walked among his countrymen in the ways of a pure and blameless life.

The undesigned encroachments on personal rights in the law of libel have at length brought about a conflict between the judiciary and the press. The press is a necessary, a potential institution in

our democratic system. It is the agent by which the people acquire the information they need in regard to the conduct of every department of the government—the judiciary as well as the legislative and executive authorities. All these departments, as well as the public conduct of all citizens, are subjected to the scrutiny of an all-powerful and all-controlling public opinion, ascertained, collected, and pronounced by the public press. That public opinion is higher than courts, and will, when it is necessary, correct even judicial errors. The conductors of the press have legitimate functions to perform, and if they perform them honestly, fairly, and faithfully, they ought to be upheld, favored and protected, rather than discouraged, embarrassed and oppressed. Under such circumstances it is neither wise, nor will it be successful, to enforce on an honest, enlightened and patriotic journal, the rules of libel established in the worst of times in England—that if a publication reflect upon any man or magistrate it shall be *presumed*, without *proof* and against all rational presumption of candor and fairness, that the error was intentional, malicious and malignant, and that vindictive damages shall be awarded where an honest but unsuccessful effort to justify is made. Far wiser and better would it be to open the doors wider to defence in such cases, and to restore the ancient English law which distinguished harmless invective, or that temperate and discreet censure or ridicule which promoted public morals, from vicious and licentious defamation. If this course is not taken, and we shall still adhere to the dictum that any censorious or ridiculing writing shall be deemed malicious and therefore libelous, the law cannot be executed, because not sustained by a sound public opinion. The action of libel will more and more be relinquished by good men, for whom it was designed, and be left to fall more completely into the hands of litigious and corrupt men as an engine of extortion and oppression. The judgments of a court will be but *brutum fulmen* if they be not sustained by the candid judgment of society, and will have no power to arrest the evil of licentiousness. Whatever may be the course of courts of justice, the press will go on to perform its high and imperative duties, sustained by the free people, whose liberties it maintains and defends. To fetter it with the star chamber rescripts of libel will be an effort as vain as would be an attempt to graduate and control by the ancient laws of the highway the velocity of the newly discovered and all-revolutionizing magnetic telegraph.

DEFENCE OF WILLIAM FREEMAN.*

Introductory Note.—In 1845, Henry Wyatt, a convict in the State Prison at Auburn, murdered another convict. Wyatt was indicted, and eminent counsel were applied to, to defend him. But they declined, on the eve of the trial, on the ground that no provision was made for their compensation.

Wyatt appealed to Mr. Seward's humanity, and he at once consented. When the circumstances were investigated, reason was found for the belief that the prisoner was insane. The trial came on in February, 1846, and after an impartial hearing, the jury disagreed. On the 12th of March, succeeding, a fearful tragedy occurred near Auburn.

William Freeman, a negro, and a native of that place, who had recently been discharged from five years' confinement in the State Prison, having provided himself with weapons, proceeded to the house of John G. Van Nest, in the suburbs of Auburn, and there, without notice and without any apparent motive, slew Mr. Van Nest, a wealthy and worthy citizen, Mrs. Van Nest, her sleeping infant, and her aged mother, and wounded mortally, as was then thought, the laboring man who dwelt with them, leaving only the maid-servant of the family, and she only had been spared because he had been disabled in the affray. He took an old horse from the stable, and, finding the animal unfit to travel, stabbed and left it by the road-side. He proceeded to the house of a relative, forty miles from Auburn, expressing a desire to remain there until he should recover from his wounds. He was arrested and conveyed back to Auburn, and then, surrounded by the people of Auburn and the adjacent country, was taken to the scene of his crimes, to be identified by the survivors, in the presence of the dead bodies of his victims.

So far from manifesting any compunction, he avowed the deed, and described its details, and laughed continually during the recital. The incensed people saw in this and other strange conduct of the prisoner, and in the absence of any motive of the crime, reason to apprehend that he might escape punishment, by a plea of insanity. They were easily made to believe that the partial success which had attended that plea in Wyatt's case, had emboldened the negro to commit acts so atrocious and so horrible. They resolved, therefore, and prepared to take him from the hands of the police, and to inflict summary justice upon him.

This design, however, was baffled by stratagem, and the multitude reluctantly dispersed, after being assured by a judge that Freeman should be tried, and "no Seward should defend him."

Meantime the victims were buried, amid sincere exhibitions of popular sympathy, mingled with execrations against the homicide, and unsparing denunciations of the lawyer whose defence of Wyatt was supposed in some way to have brought about these

* Argument in defence of William Freeman.—Auburn, July 21 and 22, 1846.

revolting crimes, and who also, it was supposed, would have the audacity to appear in defence of the wretch who had committed them. The clergyman who conducted the funeral, carried the excitement to a higher pitch, by appealing to the instincts of self-preservation and against the indulgence of moderation and forbearance toward "adroit counsel," in their efforts to lower the standard of moral accountability by the plea of insanity. Mr. Seward's law-partners and his friends, overpowered by these demonstrations of popular prejudice, gave pledges to the public that he would not outrage the prevailing sentiment, by defending the prisoner. The governor, Silas Wright, responded promptly to the popular demand for a special term of the court, to try both Wyatt and Freeman on the 1st of June. In the meantime, Mr. Seward returned from Washington, and heard the strange facts in the case with pain and surprise. They raised a suspicion that the prisoner was a lunatic. He thereupon wrote to the most eminent members of the Medical Faculty in New York, Connecticut, and Massachusetts, and called their attention to the case, as one which interested science and humanity not less than justice, and requested them to attend on the trial and make the necessary examinations of the prisoner, to the end that if he was sane the law might have its due vindication, and if he was not, the country might be saved from the crime of inflicting judicial murder upon a lunatic. He received favorable answers, and then rested, willing and anxious to leave the conduct of the case to any proper member of the bar who might be in any way employed, or induced, or assigned to defend the prisoner. The court assembled. The physicians pronounced the prisoner a lunatic. No counsel, however, appeared in his behalf, and the people who thronged the court-house and streets were expecting an unobstructed triumph. Mr. Seward however appeared and interposed a preliminary plea that the prisoner was insane. The plea was received, but it drew down upon Mr. Seward the public indignation in that vicinity and throughout the whole country, and his conduct became the subject of a political issue. His own party generally recoiled from a proceeding so unpopular, while the other party condemned him without reserve, and without moderation. After a trial of a fortnight, as to the sanity of the prisoner, the jury went out for consultation. Eleven were for a verdict that he was sane, and one for a verdict that he was insane. A private intimation of these facts was conveyed to the court, and a message returned that a verdict might be rendered that the prisoner was sane enough to distinguish between right and wrong. The twelfth juror joined in this verdict, believing it insufficient to put the prisoner on his trial; the other eleven, however, privately knew that the court would decide it to be sufficient. The trial proceeded, (Mr. Seward's efforts to set aside the verdict having failed), and after the lapse of another fortnight, a verdict of guilty was rendered, and the unconscious prisoner was sentenced to be executed. Mr. Seward applied to the governor for a pardon, but was denied. He then appealed to the Supreme Court for a new trial. John Van Buren, Attorney-General, appeared in opposition. After a patient hearing of the case, however, the court reversed the judgment, and granted a new trial. The same judge, who had before tried and condemned the prisoner, now refused to try him again, on the ground of his manifest idiocy. Indeed, the time soon arrived when all doubts were at an end.

Freeman died in his cell, about a year after his trial and conviction. A *post mortem* examination was made of his brain, and seven of the physicians of Auburn concurred in a statement that it was the subject of a chronic disease, remarkable in its extent. Such is a brief outline of this most extraordinary case. For other facts in this interesting trial, the reader is referred to the "Trial of William Freeman, by B. F. Hall, Esq., Auburn, N. Y., 1847," to the Memoir, and to the following argument:—Ed.

May it please the court—Gentlemen of the jury: "Thou shalt not kill," and, "Whoso sheddeth man's blood, by man shall his blood be shed," are laws found in the code of that people who, although distracted and dispersed through all lands, trace their history to the creation; a history that records that murder was the first of human crimes.

The first of these precepts constitutes a tenth part of the jurisprudence which God saw fit to establish, at an early period, for the government of all mankind, throughout all generations. The latter, of less universal obligation, is still retained in our system, although other states, as intelligent and refined, as secure and peaceful, have substituted for it the more benign principle that good shall be returned for evil. I yield implicit submission to this law, and acknowledge the justness of its penalty, and the duty of courts and juries to give it effect.

In this case, if the prisoner *be* guilty of murder, I do not ask remission of punishment. If he be guilty, never was murderer *more* guilty. He has murdered not only John G. Van Nest, but his hands are reeking with the blood of other, and numerous, and even more pitiable victims. The slaying of Van Nest, if a crime at all, was the cowardly crime of assassination. John G. Van Nest was a just, upright, virtuous man, of middle age, of grave and modest demeanor, distinguished by especial marks of the respect and esteem of his fellow-citizens. On his arm leaned a confiding wife, and they supported, on the one side, children to whom they had given being, and, on the other, aged and venerable parents, from whom they had derived existence. The assassination of such a man was an atrocious crime, but the murderer, with more than savage refinement, immolated on the same altar, in the same hour, a venerable and virtuous matron of more than three-score years, and her daughter, the wife of Van Nest, mother of an unborn infant. Nor was this all. Providence, which, for its own mysterious purposes, permitted these dreadful crimes, in mercy suffered the same arm to be raised against the sleeping orphan child of the butchered parents and received it into Heaven. A whole family, just, gentle, and pure, were thus, in their own house, in the night time, without any provocation, without one moment's warning, sent by the murderer to join the assembly of the just; and even the laboring man, sojourning within their gates, received

the fatal blade into his breast, and survives through the mercy, not of the murderer, but of God.

For William Freeman, as a murderer, I have no commission to speak. If he had silver and gold accumulated with the frugality of Crœsus, and should pour it all at my feet, I would not stand an hour between him and the avenger. But for the innocent, it is my right, my duty to speak. If this sea of blood was *innocently* shed, then it is my duty to stand beside him until his steps lose their hold upon the scaffold.

"Thou shalt not kill," is a commandment addressed not to him alone, but to me, to you, to the court, and to the whole community. There are no exceptions from that commandment, at least in civil life, save those of self-defence, and capital punishment for crimes in the due and just administration of the law. There is not only a question, then, whether the prisoner has shed the blood of his fellow-man, but the question, whether we shall unlawfully shed his blood. I should be guilty of murder if, in my present relation, I saw the executioner waiting for an insane man, and failed to say, or failed to do in his behalf, all that my ability allowed. I think it has been proved of the prisoner at the bar, that, during all this long and tedious trial, he has had no sleepless nights, and that even in the day time, when he retires from these halls to his lonely cell, he sinks to rest like a wearied child, on the stone floor, and quietly slumbers till roused by the constable with his staff to appear again before the jury. His counsel enjoy no such repose. Their thoughts by day and their dreams by night are filled with oppressive apprehension that, through their inability or neglect, he may be condemned.

I am arraigned before you for undue manifestations of zeal and excitement. My answer to all such charges shall be brief. When this cause shall have been committed to you, I shall be happy indeed if it shall appear that my only error has been, that I have felt too much, thought too intensely, or acted too faithfully.

If error on my part would thus be criminal, how great would yours be if you should render an unjust verdict! Only four months have elapsed since an outraged people, distrustful of judicial redress, doomed the prisoner to immediate death. Some of you have confessed, before you came here, that you approved that lawless sentence. All men now rejoice that the prisoner was saved for this solemn trial. But if this trial, through any wilful

fault or prejudice of yours, should prove only a mockery of justice, it would be as criminal as that precipitate sentence. If any prejudice of witnesses, or the imagination of counsel, or any ill-timed jest shall at any time have diverted your attention, or if any pre-judgment which you may have brought into the jury box, or any cowardly fear of popular opinion shall have operated to cause you to deny to the prisoner that dispassionate consideration of his case which the laws of God and man exact of you, and if, owing to such an error, this wretched man shall fall from among the living, what will be your crime? You will have violated the commandment, "Thou shalt not kill." It is not the form or letter of the trial by jury that authorizes you to send your fellow-man to his dread account, but it is the spirit that sanctifies that great institution; and if, through pride, passion, timidity, weakness, or any cause, you deny the prisoner one iota of all the defence to which he is entitled by the law of the land, you yourselves, whatever his guilt may be, will have broken the commandment, "Thou shalt do no murder."

There is not a corrupt or prejudiced witness, there is not a thoughtless or heedless witness, who has testified what was not true in spirit, or what was not wholly true, or who has suppressed any truth, who has not offended against the same injunction.

Nor is the Court itself above that commandment. If these Judges have been influenced by the excitement which has brought this vast assemblage here, and under such influence, or under any other influence, have committed voluntary error, and have denied to the prisoner or shall hereafter deny to him the benefit of any fact or any principle of law, then this Court will have to answer for the deep transgression, at that bar at which we all shall meet again. When we shall appear there, none of us can plead that we were insane and knew not what we did; and by just so much as our ability and knowledge exceed those of this wretch, whom the world regards as a fiend in human shape, will our guilt exceed his, if we be guilty.

I plead not for a murderer. I have no inducement, no motive to do so. I have addressed my fellow citizens in many various relations, when rewards of wealth and fame awaited me. I have been cheered on other occasions by manifestations of popular approbation and sympathy; and where there was no such encouragement, I have had at least the gratitude of him whose cause I

defended. But I speak now in the hearing of a People who have prejudged the prisoner, and condemned me for pleading in his behalf. He is a convict, a pauper, a negro, without intellect, sense, or emotion. My child, with an affectionate smile, disarms my care-worn face of its frown whenever I cross my threshold. The beggar in the street obliges me to give, because he says "God bless you," as I pass. My dog caresses me with fondness if I will but smile on him. My horse recognizes me when I fill his manger. But what reward, what gratitude, what sympathy and affection can I expect here? There the prisoner sits. Look at him. Look at the assemblage around you. Listen to their ill-suppressed censures and their excited fears, and tell me where among my neighbors or my fellow men, where even in his heart, I can expect to find the sentiment, the thought, not to say of reward or of acknowledgment, but even of recognition. I sat here two weeks during the preliminary trial. I stood here between the prisoner and the Jury nine hours, and pleaded for the wretch that he was insane and did not even know he was on trial: and when all was done, the Jury thought, at least eleven of them thought, that I had been deceiving them, or was self-deceived. They read signs of intelligence in his idiotic smile, and of cunning and malice in his stolid insensibility. They rendered a verdict that he was sane enough to be tried, a contemptible compromise verdict in a capital case; and then they looked on, with what emotions God and they only know, upon his arraignment. The District Attorney, speaking in his adder ear, bade him rise, and reading to him one indictment, asked him whether he wanted a trial, and the poor fool answered, No. Have you Counsel? No. And they went through the same mockery, the prisoner giving the same answers, until a third indictment was thundered in his ears, and he stood before the Court, silent, motionless, and bewildered. Gentlemen, you may think of this transaction what you please, bring in what verdict you can, but I asseverate before Heaven and you, that, to the best of my knowledge and belief, the prisoner at the bar does not at this moment know why it is that my shadow falls on you instead of his own.

I speak with all sincerity and earnestness; not because I expect my opinion to have weight, but I would disarm the injurious impression that I am speaking, merely as a lawyer speaks for his client. I am not the prisoner's lawyer. I am indeed a volunteer

in his behalf; but society and mankind have the deepest interests at stake. I am the lawyer for society, for mankind, shocked beyond the power of expression, at the scene I have witnessed here of trying a maniac as a malefactor. In this, almost the first of such causes I have ever seen, the last I hope that I shall ever see, I wish that I could perform my duty with more effect. If I suffered myself to look at the volumes of testimony through which I have to pass, to remember my entire want of preparation, the pressure of time, and my wasted strength and energies, I should despair of acquitting myself as you and all good men will hereafter desire that I should have performed so sacred a duty. But in the cause of humanity we are encouraged to hope for Divine assistance where human powers are weak. As you all know, I provided for my way through these trials, neither gold nor silver in my purse, nor scrip; and when I could not think beforehand what I should say, I remembered that it was said to those who had a beneficent commission, that they should take no thought what they should say when brought before the magistrate, for in that same hour it should be given them what they should say, and it should not be they who should speak, but the spirit of their Father speaking in them.

You have promised, gentlemen, to be impartial. You will find it more difficult than you have supposed. Our minds are liable to be swayed by temporary influences, and above all, by the influences of masses around us. At every stage of this trial, your attention has been diverted, as it will be hereafter, from the only question which it involves, by the eloquence of the Counsel for the People* reminding you of the slaughter of that helpless and innocent family, and of the danger to which society is exposed by relaxing the rigor of the laws. Indignation against crime, and apprehensions of its recurrence, are elements on which public justice relies for the execution of the law. You must indulge that indignation. You cannot dismiss such apprehensions. You will, in common with your fellow citizens, deplore the destruction of so many precious lives, and sympathize with mourning relations and friends. Such sentiments cannot be censured when operating upon the community at large, but they are deeply to be deplored when they are manifested in the jury box.

Then again a portion of this issue has been tried, imperfectly

* John Van Buren.

tried, unjustly tried, already. A jury of twelve men, you are told, have already rendered their verdict that the prisoner is *now* sane. The deference which right-minded men yield to the opinions of others, the timidity which weak men feel in dissenting from others, may tempt you to surrender your own independence. I warn you that that verdict is a reed which will pierce you through and through. That jury was selected without peremptory challenge. Many of the jurors entered the panel with settled opinions that the prisoner was not only guilty of the homicide, but sane, and all might have entertained such opinions for all that the prisoner could do. It was a verdict founded on such evidence as could be hastily collected in a community where it required moral courage to testify for the accused. Testimony was excluded upon frivolous and unjust pretences. The cause was submitted to the jury on the Fourth of July, and under circumstances calculated to convey a malicious and unjust spirit into the jury box. It was a strange celebration. The dawn of the Day of Independence was not greeted with cannon or bells. No lengthened procession was seen in our streets, nor were the voices of orators heard in our public halls. An intense excitement brought a vast multitude here, complaining of the delay and the expense of what was deemed an unnecessary trial, and demanding the sacrifice of a victim who had been spared too long already. Four hours that assemblage was roused and excited by denunciations of the prisoner, and ridicule of his deafness, his ignorance, and his imbecility. Before the jury retired, the court was informed that they were ready to render the verdict required. One juror, however, hesitated. The next day was the Sabbath. The jury were called, and the court remonstrated with the dissentient, and pressed the necessity of a verdict. That juror gave way at last, and the bell which summoned our citizens to church for the evening service, was the signal for the discharge of the jury, because they had agreed. Even thus a legal verdict could not be extorted. The eleven jurors, doubtless under an intimation from the court, compromised with the twelfth, and a verdict was rendered, not in the language of the law, that the prisoner was "not insane," but that he was "sufficiently sane, in mind and memory, to distinguish between right and wrong;" a verdict which implied that the prisoner was at least *partially* insane, was diseased in other faculties beside the memory, and partially diseased in that, and that, although he had

mind and memory to distinguish between right and wrong in the abstract, yet that he had not reason and understanding and will to regulate his conduct according to that distinction; in short, a verdict by which the jury unworthily evaded the question submitted to them, and cast upon the court a responsibility which it had no right to assume, but which it did nevertheless assume, in violation of the law. That twelfth juror was afterward drawn as a juror in this cause, and was challenged by the counsel for the people for partiality to the prisoner, and the challenge was sustained by the court, because, although he had, as the court say, pronounced by his verdict that the prisoner was sane, he then declared that he believed the prisoner insane, and would die in the jury box before he would render a verdict that he was sane. Last and chief of all objections to that verdict now, it has been neither pleaded nor proved here, and therefore is not in evidence before you. I trust then that you will dismiss to the contempt of mankind that jury and their verdict, which thus equivocated upon law and science, health and disease, crime and innocence.

Again. An inferior standard of intelligence has been set up here as a standard of the negro race, and a false one as a standard of the Asiatic race. This prisoner traces a divided lineage. On the paternal side his ancestry is lost among the tiger hunters on the gold coast of Africa, while his mother constitutes a portion of the small remnant of the Narragansett tribe. Hence it is held that the prisoner's intellect is to be compared with the depreciating standard of the African, and his passions with the violent and ferocious character erroneously imputed to the aborigines. Indications of manifest derangement, or at least of imbecility, approaching to idiocy, are therefore set aside, on the ground that they harmonize with the legitimate but degraded characteristics of the races from which he comes. You, gentlemen, have, or ought to have, lifted up your souls above the bondage of prejudices so narrow and so mean as these. The color of the prisoner's skin, and the form of his features, are not impressed upon the spiritual, immortal mind which works beneath. In spite of human pride, he is still your brother, and mine, in form and color accepted and approved by his Father, and yours, and mine, and bears equally with us the proudest inheritance of our race—the image of our Maker. Hold him then to be a Man. Exact of him all the responsibilities which should be exacted under like circumstances if

he belonged to the Anglo-Saxon race, and make for him all the allowances, and deal with him with all the tenderness which, under like circumstances, you would expect for yourselves.

The prisoner was obliged—no, his counsel were obliged, by law, to accept the plea of *Not Guilty*, which the court directed to be entered in his behalf. That plea denies the homicide. If the law had allowed it, we would gladly have admitted all the murders of which the prisoner was accused, and have admitted them to be as unprovoked as they were cruel, and have gone directly before you on the only defence upon which we have insisted, or shall insist, or could insist—that he is irresponsible, because he was and is insane.

We labor, not only under these difficulties, but under the further embarrassment that the plea of insanity is universally suspected. It is the last subterfuge of the guilty, and so is too often abused. But however obnoxious to suspicion this defence is, there have been cases where it was true; and when true, it is of all pleas the most perfect and complete defence that can be offered in any human tribunal. Our Saviour forgave his judges because "they knew not what they did." The insane man who has committed a crime, knew not what he did. If this being, dyed with human blood, be *insane*, you and I, and even the children of your affections, are not more guiltless than he.

Is there reason to indulge a suspicion of fraud here? Look at this stupid, senseless fool, almost as inanimate as the clay moulded in the brick-yard, and say, if you dare, that you are afraid of being deceived by him. Look at me. You all know me. Am I a man to engage in a conspiracy to deceive you and defraud justice? Look on us all, for although I began the defence of this cause alone, thanks to the generosity, to the magnanimity of an enlightened profession, I come out strong in the assistance of counsel never before attached to me in any relation, but strongly grappled to me now, by these new and endearing ties. Is any one of us a man to be suspected? The testimony is closed. Look through it all. Can suspicion or malice find in it any ground to accuse us of a plot to set up a false and fabricated defence? I will give you, gentlemen, a key to every case where insanity has been wrongfully, and yet successfully maintained. Gold, influence, popular favor, popular sympathy, raised that defence, and made it impregnable. But you have never seen a poor, worthless, spir-

itless, degraded negro like *this*, acquitted wrongfully. I wish this trial may prove that such an one can be acquitted rightfully. The danger lies here. There is not a WHITE man or WHITE woman who would not have been dismissed long since from the perils of such a prosecution, if it had only been proved that the offender was so ignorant and so brutalized as not to understand that the defence of insanity had been interposed.

If he feign, who has trained the idiot to perform this highest and most difficult of all intellectual achievements? Is it I? Shakspeare and Cervantes only, of all mankind, have conceived and perfected a counterfeit of insanity. Is it I? Why is not the imposition exposed, to my discomfiture and the prisoner's ruin? Where was it done? Was it in public, here? Was it in secret, in the jail? His deafened ears could not hear me there unless I were also overheard by other prisoners, by jailers, constables, the sheriff, and a cloud of witnesses. Who has the keys of the jail? Have I? You have had sheriff, jailer, and the whole police upon the stand. Could none of these witnesses reveal our plot? Were there none to watch and report the abuse? When they tell you, or insinuate, gentlemen, that this man has been taught to feign insanity, they discredit themselves, as did the Roman sentinels, who, appointed to guard the sepulchre of our Saviour, said, in excuse of the broken seal, that while they slept men came and rolled away the stone.

I advance towards the merits of the cause. The law which it involves will be found in the case of Kleim, tried for murder in 1844; before Judge Edmonds, of the first circuit, in the city of New York, reported in the Journal of Insanity for January, 1846, at page 261. I read from the report of the judge's charge:

"He told the Jury that there was no doubt that Kleim had been guilty of the killing imputed to him, and that under circumstances of atrocity and deliberation which were calculated to excite in their minds strong feelings of indignation against him. But they must beware how they permitted such feelings to influence their judgment. They must bear in mind that the object of punishment was not vengeance, but reformation; not to extort from a man an atonement for the life which he cannot give, but by the terror of the example, to deter others from the like offences, and that nothing was so likely to destroy the public confidence in the administration of criminal justice, as the infliction of its pains upon one whom Heaven has already afflicted with the awful malady of insanity."

These words deserve to be written in letters of gold upon tablets of marble. Their reason and philosophy are apparent. If you send the lunatic to the gallows, society will be shocked by your inhumanity, and the advocates for the abolition of capital punish-

ment will find their most effective argument in the fact that a jury of the country, through ignorance or passion, or prejudice, have mistaken a madman for a criminal.

The report of Judge Edmonds' charge proceeds:

"It was true that the plea of insanity was sometimes adopted as a cloak for crime, yet it was unfortunately equally true, that many more persons were unjustly convicted, to whom their unquestioned insanity ought to have been an unfailing protection."

This judicial answer to the argument that jurors are too likely to be swayed by the plea of insanity, is perfect and complete.

Judge Edmonds further charged the jury—

"That it was by no means an easy matter to discover or define the line of demarkation where sanity ended and insanity began," and that it was often "difficult for those most expert in the disease to detect or explain its beginning, extent, or duration," "that the classifications of the disease were in a great measure arbitrary, and the jury were not obliged to bring the case of the prisoner within any one of the classes, because the symptoms of the different kinds were continually mingling with each other."

The application of this rule will render the present case perfectly clear, because it appears from the evidence that the prisoner is laboring under a combination of *mania* or excited madness, with *dementia* or decay of the mind.

Judge Edmonds furnishes you with a balance to weigh the testimony in the case, in these words:

"It was important that the jury should understand how much weight was to be given to the opinions of medical witnesses. The opinions of men who had devoted themselves to the study of insanity as a distinct department of medical science, and studied recent improvements and discoveries, especially when to that knowledge they added the experience of personal care of the insane, could never be safely disregarded by Courts and Juries; and on the other hand, the opinions of physicians who had not devoted their particular attention to the disease, were not of any more value than the opinions of common persons."

This charge of Judge Edmonds furnishes a lamp to guide your feet, and throws a clear and broad light over your path. He acknowledges, in the first place, with distinguished independence for a judge and a lawyer, that "the law, in its slow and cautious progress, still lags far behind the advance of true knowledge." An insane person is one who, at the time of committing the act, labored under such a defect of reason as not to know the nature and quality of the act he was doing, or if he did know it, did not know he was doing what was wrong; and the question is not whether the accused knew the difference between right and wrong *generally*, but whether he knew the difference between right and wrong in regard to the very act with which he is charged." "If some controlling disease was in truth, the acting power within him, which he could not resist, or if he had not a sufficient use of

his reason to control the passions which prompted him, he is not responsible. But it must be an absolute dispossession of the free and natural agency of the human mind. In the glowing but just language of Erskine, it is not necessary that Reason should be hurled from her seat, it is enough that Distraction sits down beside her, holds her trembling in her place, and frightens her from her propriety."

Judge Edmonds proceeds:

"And it must be borne in mind that the *moral* as well as the *intellectual* faculties may be so disordered by the disease as to deprive the mind of its controlling and directing power.

"In order then to establish a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong; to remember and understand, that if he commit the act, he will be subject to punishment; and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it.

"If, on the other hand, he have not intelligence enough to have a criminal intent and purpose; and if his moral or intellectual powers are either so deficient that he has not sufficient will, conscience, or controlling mental power; or if through the overwhelming violence of mental disease his intellectual power is for the time obliterated, he is not a responsible moral agent."

The learned Judge recommends to the jury,

"As aids to a just conclusion, to consider the extraordinary and unaccountable alteration in the prisoner's whole mode of life; the inadequacy between the slightness of the cause and the magnitude of the offence; the recluse and ascetic life which he had led; his invincible repugnance to all intercourse with his fellow creatures; his behavior and conduct at the time the act was done, and subsequently during his confinement; and the stolid indifference which he alone had manifested during the whole progress of a trial upon which his life or death depended."

Kleim was acquitted, and sent, according to law, to the State Lunatic Asylum at Utica. The Superintendent of the Asylum, in a note to this report, states that Kleim is uniformly mild and pleasant, has not asked a question, or spoken or learned the name of any one; seems very imperfectly to recollect the murder or the trial; says he "was put in prison; does not know what for; and was taken to the court, but had no trial;" that his bodily health is good, but that his mind is nearly gone—quite demented.

You cannot fail, Gentlemen of the Jury, to remark the extraordinary similarity between the case of Kleim, as indicated in the charge of Judge Edmonds, and that of the prisoner at the bar. If I were sure *you* would receive such a charge, and be guided by it, I might rest here, and defy the eloquence of the Attorney General. The proof of insanity in this case is of the same nature, and the disease in the same form as in the case of Kleim. The only difference is, that the evidence here is a thousand times more conclusive. But Judge Edmonds does not preside here. Kleim was a *white* man, Freeman is a *negro*. Kleim set fire to a house, to

burn only a poor, obscure woman and her child. Here the madman destroyed a whole family, rich, powerful, honored, respected and beloved. Kleim was tried in the city of New York; and the community engaged in their multiplied avocations, and heedless of a crime not unfrequent there, and occurring in humble life, did not overawe and intimidate the court, the jury, or the witnesses. Here a panic has paralyzed humanity. No man or woman feels safe until the maniac shall be extirpated from the face of the earth. Kleim had the sympathies of men and women, willing witnesses, advocates sustained and encouraged by popular favor, and an impartial jury. Freeman is already condemned by the tribunal of public opinion, and has reluctant and timorous witnesses, counsel laboring under embarrassments plainly to be seen, and a jury whose impartiality, although it ought to have been ascertained at the beginning, is yet to be proved.

The might that slumbered in this maniac's arm was exhausted in the paroxysm which impelled him to his dreadful deeds. Yet an excited community, whose terror has not yet culminated, declare that, whether sane or insane, he must be executed to give safety to your dwellings and theirs. I must needs then tell you the law, which will disarm such cowardly fear. If you acquit the prisoner, he cannot go at large, but must be committed to jail, to be tried by another jury, for a second murder. Your dwellings therefore will be safe. If such a jury find him sane, he will then be sent to his fearful account, and your dwellings will be safe. If acquitted, he will be remanded to jail, to await a third trial, and your dwellings will be safe. If that jury convict, he will then be executed, and your dwellings will be safe. If they acquit, he will still be detained to answer for a fourth murder, and your dwellings will be safe. Whether the fourth jury acquit or convict, your dwellings will still be safe: for if they convict, he will then be cut off; and if they acquit, he must, according to the law of the land, be sent to the Lunatic Asylum, there to be confined for life. You may not slay him, then, for the public security, because the public security does not demand the sacrifice. No security for home or hearth can be obtained by judicial murder. God will abandon him who, through cowardly fear, becomes such a murderer. *I* also stand for the security of the homes and hearths of my fellow citizens, and have as deep an interest, and as deep a stake as any one of them. *Here* are my home and hearth, exposed

to every danger that can threaten theirs; but I know that security cannot exist for any, if feeble man undertakes to correct the decrees of Providence.

The Counsel for the People admit in the abstract that insanity excuses crime, but they insist on rules for the regulation of insanity to which that disease can never conform itself. Dr. Foscate testified that the prisoner was insane. He was asked by the Attorney General, "What if the law, nevertheless, hold to be criminal that same state of mind which you pronounce insanity?" He answered with high intelligence and great moral firmness, "The law cannot alter the constitution of man, as it was given him by his Maker."

Insanity such as the Counsel for the People would tolerate, never did and never will exist. They bring its definition from Coke, Blackstone and Hale, and it requires that by reason either of natural infirmity or of disease, the wretched subject shall be unable to count twenty, shall not know his father or mother, and shall have no more reason or thought than a brute beast.

According to the testimony of Dr. Spencer, and the claim of the Attorney General, an individual is not insane if you find any traces or glimmerings of the several faculties of the human mind, or of the more important ones. Dr. Spencer has found in the prisoner, memory of his wrongs and sufferings, hunger to be appeased, thirst to be quenched, choice between bread and animal food, love of combat, imperfect knowledge of money, anger and malice. All of Dr. Spencer's questions to the accused show that, in looking for insanity, he demands an entire obliteration of all conception, attention, imagination, association, memory, understanding and reason, and every thing else. There never was an idiot so low, never a diseased man so demented.

You might as well expect to find a man born without eyes, ears, nose, mouth, hands and feet, or deprived of them all by disease, and yet surviving, as to find *such* an idiot, or such a lunatic, as the Counsel for the People would hold irresponsible. The reason is, that the human mind is not capable, while life remains, of such complete obliteration. What is the human mind? It is immaterial, spiritual, immortal; an emanation of the Divine Intelligence, and if the frame in which it dwells had preserved its just and natural proportions, and perfect adaptation, it would be a pure and heavenly existence. But that frame is marred and disordered in its best estate. The spirit has communication with the world

without, and acquires imperfect knowledge only through the half-opened gates of the senses. If, from original defects, or from accidental causes, the structure be such as to cramp or restrain the mind, it becomes or appears to be weak, diseased, vicious and wicked. I know one who was born without sight, without hearing, and without speech, retaining the faculties of feeling and smell. That child was, and would have continued to be an idiot, incapable of receiving or communicating thoughts, feelings or affections; but tenderness unexampled, and skill and assiduity unparalleled, have opened avenues to the benighted mind of Laura Bridgman, and developed it into a perfect and complete human spirit, consciously allied to all its kindred, and aspiring to Heaven. Such is the mind of every idiot, and of every lunatic, if you can only open the gates, and restore the avenues of the senses; and such is the human soul when deranged and disordered by disease, imprisoned, confounded, benighted. That disease is insanity.

Doth not the idiot eat? Doth not the idiot drink? Doth not the idiot know his father and his mother? He does all this because he is a man. Doth he not smile and weep? Do you think he smiles and weeps for nothing? He smiles and weeps because he is moved by human joys and sorrows, and exercises his reason, however imperfectly. Hath not the idiot anger, rage, revenge? Take from him his food, and he will stamp his feet and throw his chains in your face. Do you think he doth this for nothing? He does it all because he is a man, and because, however imperfectly, he exercises his reason. The lunatic does all this, and, if not quite demented, all things else that man, in the highest pride of intellect, does or can do. He only does them in a different way. You may pass laws for his government. Will he conform? Can he conform? What cares he for your laws? He will not even plead; he cannot plead his disease in excuse. *You* must interpose the plea for him, and if you allow it, he, when redeemed from his mental bondage, will plead for you when he shall return to your Judge and his. If you deny his plea, he goes all the sooner, freed from imperfection, and with energies restored, into the presence of that Judge. You must meet him there, and then, no longer bewildered, stricken and dumb, he will have become as perfect, clear and bright, as those who reviled him in his degradation, and triumphed in his ruin.

And now what is insanity? Many learned men have defined

it for us, but I prefer to convey my idea of it in the simplest manner. Insanity is a disease of the body, and I doubt not of the brain. The world is astonished to find it so. They thought for almost six thousand years that it was an affection of the mind only. Is it strange that the discovery should have been made so late? You know that it is easier to move a burden upon two smooth rails on a level surface, than over the rugged ground. It has taken almost six thousand years to learn that. But moralists argue that insanity shall not be admitted as a physical disease, because it would tend to exempt the sufferer from responsibility, and because it would expose society to danger. But who shall know, better than the Almighty, the ways of human safety, and the bounds of human responsibility?

And is it strange that the brain should be diseased? What organ, member, bone, muscle, sinew, vessel or nerve is not subject to disease? What is physical man, but a frail, perishing body, that begins to decay as soon as it begins to exist? What is there of animal existence here on earth exempt from disease and decay? Nothing. The world is full of disease, and that is the great agent of change, renovation and health.

And what wrong or error can there be in supposing that the mind may be so affected by disease of the body as to relieve man from responsibility? You will answer, it would not be safe. But who has assured you of safety? Is not the way of life through dangers lurking on every side, and though you escape ten thousand perils, must you not fall at last? Human life is not safe, nor intended to be safe, against the elements. Neither is it safe, nor intended to be safe, against the moral elements of man's nature. It is not safe against pestilence, nor against war, against the thunderbolts of heaven, nor against the blow of the maniac. But comparative safety can be secured, if you will be wise. You can guard against war, if you will cultivate peace. You can guard against the lightning, if you will learn the laws of electricity, and raise the protecting rod. You will be safe against the maniac, if you will watch the causes of madness, and remove them. Yet after all, there will be danger enough from all these causes to remind you that on earth you are not immortal.

Although my definition would not perhaps be strictly accurate, I should pronounce insanity to be a derangement of the mind, character and conduct, resulting from bodily disease. I take this

word derangement, because it is one in common every day use. We all understand what is meant when it is said that anything is ranged or arranged. The houses on a street are ranged, if built upon a straight line. The fences on your farms are ranged. A single object too may be ranged. A tower, if justly built, is ranged; that is, it is ranged by the plummet. It rises in a perpendicular range from the earth. A file of men marching in a straight line are in range. "Range yourselves, men," though not exactly artistical, is not an uncommon word of command. Now what do we mean when we use the word "*de*ranged?" Manifestly that a thing is not ranged, is not arranged, is out of range. If the houses on the street be built irregularly, they are deranged. If the walls be inclined to the right or left, they are deranged. If there be an unequal pressure on either side, the tower will lean, that is, it will be deranged. If the file of men become irregular, the line will be deranged. So if a man is insane. There was a regular line which he was pursuing; not the same line which you or I follow, for all men pursue different lines, and every sane man has his own peculiar path. All these paths are straight, and all are ranged, though all divergent. It is easy enough to discover when the street, the wall, the tower, or the martial procession is deranged. But it is quite another thing to determine when the course of an individual life has become deranged. We deal not then with geometrical or material lines, but with an imaginary line. We have no physical objects for landmarks. We trace the line backward by the light of imperfect and unsatisfactory evidence, which leaves it a matter almost of speculation whether there has been a departure or not. In some cases, indeed, the task is easy. If the fond mother becomes the murderer of her offspring, it is easy to see that she is deranged. If the pious man, whose steps were firm and whose pathway led straight to heaven, sinks without temptation into criminal debasement, it is easy to see that he is deranged. But in cases where no natural instinct or elevated principle throws its light upon our research, it is often the most difficult and delicate of all human investigations to determine when a person is deranged.

We have two tests. *First*, to compare the individual after the supposed derangement with himself as he was before. *Second*, to compare his course with those ordinary lines of human life which

we expect sane persons, of equal intelligence, and similarly situated, to pursue.

If derangement, which is insanity, mean only what we have assumed, how absurd is it to be looking to detect whether memory, hope, joy, fear, hunger, thirst, reason, understanding, wit, and other faculties, remain? So long as life lasts, they never cease to abide with man, whether he pursue his straight and natural way, or the crooked and unnatural course of the lunatic. If he be diseased, his faculties will not cease to act. They will only act differently. It is contended here that the prisoner is not deranged because he performed his daily task in the State Prison, and his occasional labor afterward; because he grinds his knives, fits his weapons, and handles the file, the axe and the saw, as he was instructed, and as he was wont to do. Now, the Lunatic Asylum at Utica has not an idle person in it, except the victims of absolute and incurable dementia, the last and worst stage of all insanity. Lunatics are almost the busiest people in the world. They have their prototypes only in children. One lunatic will make a garden, another drive the plough, another gather flowers. One writes poetry, another essays, another orations. In short, lunatics eat, drink, sleep, work, fear, love, hate, laugh, weep, mourn, die. They do all things that sane men do, but do them in some peculiar way. It is said, however, that this prisoner has hatred and anger, that he has remembered his wrongs, and nursed and cherished revenge; wherefore, he cannot be insane. Cowper, a moralist who had tasted the bitter cup of insanity, reasoned otherwise:

> "But violence can never longer sleep
> Than human passions please. In ev'ry heart
> Are sown the sparks that kindle fi'ry war;
> Occasion needs but fan them and they blaze,
> The seeds of murder in the breast of man."

Melancholy springs oftenest from recalling and brooding over wrong and suffering. Melancholy is the first stage of madness, and it is only recently that the less accurate name of monomania has been substituted in the place of melancholy. Melancholy is the foster-mother of anger and revenge. Until 1830, our statutory definition of lunatics was in the terms "*disorderly persons who, if left at large, might endanger the lives of others.*" Our laws now regard them as *merely* disorderly and dangerous, and society acquiesces, unless madness rise so high, that the madman slays his imaginary enemy, and then he is pronounced sane.

The prisoner lived with Nathaniel Lynch, at the age of eight or nine, and labored occasionally for him during the last winter. Lynch visited him in the jail, and asked him if he remembered him, and remembered living with him. The prisoner answered, Yes. Lynch asked the prisoner whether he was whipped while there, and by whom, and why. From his answers, it appeared that he had been whipped by his mistress for playing truant, and that he climbed a rough board fence in his night-clothes and fled to his mother. Upon this evidence, the learned professor from Geneva College, Dr. SPENCER, builds an argument that the prisoner has conception, sensation, memory, imagination, and association, and is most competent for the scaffold. Now, here are some verses to which I would invite the doctor's attention:

> "Shut up in dreary gloom, like convicts are,
> In company of murderers! Oh, wretched fate!
> If pity e'er extended through the frame,
> Or sympathy's sweet cordial touched the heart,
> Pity the wretched maniac who knows no blame,
> Absorbed in sorrow, where darkness, poverty, and every curse impart."

Here is evidence not merely of memory and other faculties, but of what we call *genius*. Yet these verses are a sad effusion of Thomas Lloyd, a man-slaying maniac in Bedlam.

The first question of fact here, gentlemen, as in every case where insanity is gravely insisted upon, is this:

IS THE PRISONER FEIGNING OR COUNTERFEITING INSANITY?

What kind of man is he? A youth of twenty-three, without learning, education, or experience. Dr. SPENCER raises him just above the brute; Dr. BIGELOW exalts him no higher; and Dr. DIMON thinks that he has intellectual capacity not exceeding that of a child of ten years, with the knowledge of one of two or three. These are the people's witnesses. All the witnesses concur in these estimates of his mind.

Can you conceive of such a creature comprehending such a plot, and standing up in his cell in the jail, hour after hour, day after day, week after week, and month after month, carrying on such a fraud; and all the while pouring freely into the ears of inquisitors curious, inquisitors friendly, and inquisitors hostile, without discrimination or alarm, or apparent hesitation or suspicion, with "child-like simplicity," as our witnesses describe it, and with "entire docility," as it is described by the witnesses for the people, confessions of crime which, if they fail to be received as

evidences of insanity, must constitute an insurmountable barrier to his acquittal?

I am ashamed for men who, without evidence of the prisoner's dissimulation, and in opposition to the unanimous testimony of all the witnesses, that he is sincere, still think that this poor fool may deceive them. If he could feign, and were feigning, would he not want some counsel, some friend, if not to advise and assist, at least to inform him of the probable success of the fraud? And yet no one of his counsel or witnesses has ever conversed with him, but in a crowd of adverse witnesses; and for myself, I have not spoken with him in almost two months, and during the same period have never looked upon him elsewhere than here, in the presence of the Court and of the multitude.

Would a sane man hold nothing back? admit everything? to every body? affect no ignorance? no forgetfulness? no bewilderment? no confusion? no excitement? no delirium?

Dr. Ray, in his Treatise on the Medical Jurisprudence of Insanity, (p. 333) gives us very different ideas from all this, of those who can feign, and of the manner of counterfeiting:

"A person who has not made the insane a subject of study, cannot simulate madness, so as to deceive a physician well acquainted with the disease. Mr. Haaslam declares that 'to sustain the character of a paroxysm of active insanity, would require a continuity of exertion beyond the power of a sane person.' Dr. Conolly affirms that he can hardly imagine a case which would be proof against an efficient system of observation.

"The grand fault committed by impostors is, that they *overdo* the character they assume.

"The really mad, except in the acute stage of the disease, are, generally speaking, not readily recognized as such by a stranger, and they retain so much of the rational as to require an effort to detect the impairment of their faculties.

"Generally speaking, after the acute stage has passed off, a maniac has no difficulty in remembering his friends and acquaintances, the places he has been accustomed to frequent, names, dates, and events, and the occurrences of his life. The ordinary relations of things are, with some exceptions, as easily and clearly perceived as ever, and his discrimination of character seems to be marked by his usual shrewdness.

* * * A person simulating mania will frequently deny all knowledge of men and things with whom he has always been familiar."

And now, gentlemen, I will give you a proof of the difference between this real science and the empiricism upon which the counsel for the people rely, in this cause. Jean Pierre was brought before the Court of Assizes in Paris, in 1824, accused of forgery, swindling, and incendiarism. He feigned insanity. A commission of eminent physicians examined him, and detected his imposture by his pretended forgetfulness, and confusion in answering interrogatories concerning his life and history. The most prominent of these questions are set down in the books.—*Ray*, p. 338.)

I submitted these questions and answers, with a statement of Jean Pierre's case to Dr. Spencer, and he, governed by the rules which have controlled him in the present cause, pronounced the impostor's answers to be evidence of insanity, because they showed a decay of memory.

Again, gentlemen, look at the various catechisms in which this prisoner has been exercised for two months, as a test of his sanity. Would any sane man have propounded a solitary one of all those questions to any person whom he believed to be of sound mind? Take an instance. On one occasion, Dr. Willard, a witness for the people, having exhausted the idiot's store of knowledge and emotion, expressed a wish to discover whether the passion of fear had burned out, and employing Mr. Morgan's voice, addressed the prisoner thus: "Bill, they're going to take you out to kill you. They're going to take you out to kill you, Bill." The poor creature answered nothing. "What do you think of it, Bill?" Answer: "I don't think about it—I don't believe it." "Bill," continues the inquisitor, with louder and more terrific vociferation, "they're going to kill you, and the doctors want your bones; what do you think of it, Bill?" The prisoner answers: "I don't think about it—I don't believe it." The Doctor's case was almost complete, but he thought that perhaps the prisoner's stupidity might arise from inability to understand the question. Therefore, lifting his voice still higher, he continues: "Did you ever see the doctors have any bones? Did you ever see the doctors have any bones, Bill?" The fool answers: "I have." "Then where did you see them, Bill?" "In Dr. Pitney's office." And thus, by this dialogue, the sanity of the accused is, in the judgment of Dr. Willard, completely established. It is no matter that if the prisoner had believed the threat, his *belief* would have proved him sane; if he had been terrified, his *fears* would have sent him to the gallows; if he had forgotten the fleshless skeleton he had seen, he would have been convicted of *falsehood*, and of course have been sane. Of such staple as this are all the questions which have been put to the prisoner by all the witnesses. There is not an interrogatory which any one of you would put to a child twelve years old.

Does the prisoner feign insanity? One hundred and eight witnesses have been examined, of whom seventy-two appeared on behalf of the people. No one of them has expressed a belief that he was simulating. On the contrary, every witness to whom the

inquiry has been addressed, answers that the sincerity of the prisoner is beyond question.

Mr. John R. Hopkins says: "I watched him sharply to discover any simulation, but I couldn't. There was no deception. If there had been I should have detected it."

Ethan A. Warden, President of the village of Auburn, with whom the prisoner had the most extended conversation, says: "I suppose he thought he spoke the truth."

Ira Curtis, Esq., testifies: "It did occur to me whether the prisoner, with his appearance of sincerity, was attempting to play off a game of imposture. The thought vanished in a moment. There was too much before me. I have no doubt of his sincerity. I don't believe it is in the power of all in this room to teach him to carry on a piece of deception for fifteen minutes, because he would forget what he set about."

Dr. Hermance says: "He spoke with so much sincerity."

The Rev. John M. Austin says: "He did not dissemble. I should suppose him the shrewdest man in the world if he did dissemble. I have not the slightest doubt that there was no attempt to dissemble."

The tenor of the testimony of all the witnesses for the prisoner, learned and unlearned, is the same.

The witnesses for the people, learned and unlearned, concur.

Dr. Bigelow says: "He has betrayed no suspicion of me. He has manifested entire docility to me."

Dr. Spencer describes the manner of the witness in giving all his answers, as "entirely frank."

Dr. Clary concludes the question of sincerity against all doubt. He says: "It seemed to me that he either thought he was reading or that he meant to deceive, and I don't think the latter, for he always seemed to be very frank."

It being thus absolutely settled, gentlemen, that the prisoner does not simulate insanity, I pass to the second proposition in this defence, which is, that

It is proved that the prisoner is changed.

I shall first ask you to compare him now with himself in the earlier and happier period of his life.

Nathaniel Hersey, a witness for the people, a colored man, knew the prisoner seven years ago, and says: "He was a lively, smart boy, laughed, played, and was good-natured; understood as well as any body; could tell a story right off; talked like other folks."

This is the testimony of an associate of the prisoner at the age of sixteen.

John Depuy is a brother-in-law of the accused, and has known him more than twelve years. This witness says: the prisoner "was an active, smart boy, lively as any other you could find, a good boy to work; set him to work any where and he would do it; sociable and understood himself, and had some learning; could read in the spelling book pretty well; could read off simple reading lessons in the spelling book, smooth and decent."

David Winner, a colored man, was the friend and companion of the parents of the prisoner. He says: "When this boy was twelve or thirteen years old, he was a pretty sprightly lad, sensible, very lively. I saw no difference between him and any other boy of sense, at that time."

Nathaniel Lynch, a witness for the people, in whose house the prisoner was an inmate at the age of eight years, says: "He was a lively, playful boy, almost always smiling and laughing, and appeared to be a lively, laughing, playful boy."

Daniel Andrus, a witness for the people, testifies that he employed the prisoner eight years ago, and talked with him then as he would with any other laboring man.

Mary Ann Newark has known the prisoner from childhood, and says: "He was a lively, smart boy."

Honest Adam Gray was a friend of the prisoner's parents, and says: "He was a smart boy, was very active; always thought him a pretty cunning kind of a boy."

Dr. Briggs knew him twelve years ago, as "a lad of ordinary intelligence for boys of his condition."

Robert Freeman was a fellow servant with the prisoner, at the American Hotel, eight years ago, and though he never entered into any argument with the prisoner to find out his mother-wit, he says: "He was playful betimes, seemed to understand every thing, and very active."

Dr. Van Epps knew the prisoner in his early infancy, and says: "He then appeared as bright and intelligent as children generally are at that age."

Thomas F. Munroe, a witness for the people, certainly not partial to the prisoner, says: "In his youth he was quick and active, and not much different from other black boys."

A. A. Vanderheyden, a witness for the people, represents the prisoner as "active and intelligent" in his youth.

Aretas A. Sabin, a witness for the people, knew the prisoner fifteen or sixteen years ago, and says that he was no more or less playful than other boys, and that he *wept* on entering the State Prison at the age of sixteen.

Jefferson Wellington, a hostile witness, testifies that the prisoner was sociable and talked freely upon general subjects at the age of sixteen.

Lewis Markham has known the prisoner from childhood, and declares that "he was a smart boy, pretty actice, quick, sprightly, shrewd, attentive and faithful, without any lack of conversational powers."

Ethan A. Warden received the prisoner into his family fifteen or sixteen years ago, "as a bright boy, and took him for the reason that he was so," and now declares that "he was then a lad of good understanding, and of kind and gentle disposition."

Sally Freeman, the prisoner's mother, gives this simple account of him: "When he was young he was a very smart child, before he went to the State Prison. He was always very playful and good-natured. About understanding things he was the same as other children."

Finally, Deborah Depuy, who is of the same age with the prisoner, of the same caste, and moves in the same humble sphere, testifies that she "knew him before he went to the State Prison, in childhood and youth;" that "his manners, action, and mind were very good—as good as other boys;" that she "associated with him; he was as bright as any body else; he was very cheerful;" she had "been with him to balls and rides: he acted very smart on such occasions;" she had "talked with him often, and never discovered any lack of intelligence."

Such, gentlemen, is a complete picture of the childhood and youth of the prisoner at the bar. Its truthfulness and fidelity are unquestioned, for all the witnesses on both sides have drawn it for you.

Look on that picture and then on the one I shall now present, and, since I must speak of a class lowly and despised,

> "Let not ambition mock their useful toil,
> Their humble joys and destiny obscure:
> Nor grandeur hear with a disdainful smile
> The short and simple annals of the poor."

You have seen that the prisoner wept, as well he might, when he entered the State Prison at the age of sixteen. It was the last manifestation he has ever given of a rational mind.

Ethan A. Warden says: "I saw the prisoner in the State Prison. He appeared stupid and different from what he used to be, and from what I expected he would be. I cannot describe the difference; it was so peculiar. I said to him, 'Bill, are you here?'

and repeated the question two or three times ; at first he did not understand, but at last said, ' Yes.' He appeared changed."

John Depuy saw the prisoner in the State Prison at five different times, but was not allowed to speak with him. Depuy says the prisoner "was carrying something on his back like a knapsack, and walking back and forth in the yard. He did not appear as he did before he went to prison. He appeared stupid, took no notice of anything. He did not know me, and took no notice of me. I saw him at other times when at work and when idle, and then thought there was something the matter with him. I thought he was not in his right mind."

William P. Smith was a foreman of one of the shops in the State Prison during the third year of the prisoner's confinement there, and had charge of him. He describes him as "passionate, sullen, and stupid." This witness relates that the prisoner had oiled his shoes neatly and set them upon a wood pile, that a convict accidentally disturbed the shoes, and that the prisoner struck the convict with a billet of wood with great violence, for which offence he was punished; that at another time, with as little provocation, he attacked another convict with great fury for displacing some yarn on a reel. The witness says : "When I sent him on an errand, he required repeated and very particular instructions. I considered his intellect at the time very low indeed. He knew very little, not much more than a brute or beast."

Theron R. Green, who was a keeper in the prison and had charge of the prisoner, declares that he "had very little mind, was a half-day man, was slow, awkward, dull, downcast, and would have frequent freaks of laughing, without any observable cause of laughter." The witness tried to instruct him in his cell on Sundays, but he could learn nothing." Mr. Green says : "He was irritable, malicious, and of bad temper ; often violated rules, for which I did not punish him, because I thought him irresponsible. I think that he had as much capacity as a brute beast. I don't know as he had more. If more, there was none to spare. I remarked when he left the shop, that he ought not to go at large."

Horace Hotchkiss was a teacher in the Sunday School at the State Prison, and says that the prisoner "was dismissed from the school because he could not be taught to read."

Such is the imperfect history of the prisoner at the bar, while he was shut up from the observation of men, and deprived by the discipline of the State Prison of the use of speech and of the privilege of complaint.

He was discharged from prison on the twentieth of last September.

Alonzo Wood, the new chaplain of the State Prison, visited him in his cell there twice during the last month of his confinement, and asked him questions, which the prisoner noticed only by inclining his head. The chaplain expressed a hope to him on the day of his discharge that he might be able to keep out of prison thereafter, and inquired whether he wanted a Bible." I understood him to say," says the witness, "that it would be of no use—that he couldn't read." At the Clerk's office he received the usual gratuity of two dollars, for which he was required to sign a voucher. He answered, "I have been in prison five years unjustly, and ain't going to settle so."

The officers, including the reverend chaplain, laughed heartily at what they thought gross ignorance.

The prisoner's faithful brother-in-law, John Depuy, was waiting in the hall to conduct him homeward. His narrative is simple and affecting. "I sat down," says Depuy, "on the long chair in the hall. He came out and passed me as if he didn't know me. I went up and touched him, and asked him if he knew me, and he kind o' laughed. We came along to Apple-

gate's, where I stopped to assist to raise a new building. He sat down on a pile of boards. He sat there and acted very stupid and dull and said nothing. They asked me what damned fool I had with me sitting there?

"He didn't know the value of his money. He had received four half dollars, and thought they were quarters. We went to the hatter's for a cap—found one worth half a dollar; he threw down two halves. I handed one back to him, and told him to come out. After he came out, he insisted that he had paid only half enough for the cap, and that they would make a fuss about it." All the leisure hours of that day and the next were spent by the prisoner, according to DEPUY's account, in giving relations of the injustice and cruelty he had suffered in the prison. He was very deaf, and assigned as the cause of it, that Tyler, one of the keepers in the prison, had struck him across the ears with a board, and had knocked his hearing off so he couldn't hear, and his hearing had never come back. "I asked him," says the witness, "if they had done anything for his deafness. He said, 'Yes, they put salt in my ear, but it didn't do any good, for my hearing was gone and all knocked off.'"

Again. The prisoner told DEPUY that while eating, he had broken his dinner knife in the prison, and the keepers had threatened to put him back five years for that; and says DEPUY, "he asked me if they could do it." He complained to DEPUY, as we shall have occasion to see hereafter, that he had been wrongfully imprisoned, and wanted to find the people who had done him such injustice, for the purpose of getting pay from them.

Such was the change which had come over the prisoner. The bright, lively, social, active youth of sixteen, had become a drivelling, simple fool.

The prisoner remained with DEPUY some two or three months. He asked for esquires, to get warrants for the people who put him in the state prison; at one time said the justices refused to give him warrants; at another time, that "he had got it all fixed," and he wanted DEPUY to go down and see that he got his pay right; at another, said that "he couldn't do nothing with them—they cheated him all the time, and he couldn't live so." He followed DEPUY seven miles, to Skaneateles, and brought him back to Auburn, to help the prisoner in a dispute with Mr. Conklin, the harness-maker, about sawing some wood, for which he claimed

thirty-seven and a half cents, and Conklin refused to pay him more than twenty-five cents. DEPUY, dealing with the prisoner as Dr. BRIGHAM would, made peace by paying him the difference, and settled in the same way a difference between the prisoner and Mr. Murfey, the merchant.

The prisoner's mind was very unsteady during the winter. DEPUY continues: "He did not know half the time what he was doing; he would go up the street, and then turn and run violently in the other direction. He never commenced any conversation with any body, never asked a question; smiled without cause; got up out of his bed at night many times, sometimes two or three times in the same night, and on such occasions would sing irregularly, dance and spar, as if with a combatant; saying sometimes: 'By God! I'll see you out;' sometimes he would take a book and mumble words as if reading, but there was no sense in the words. When asked afterward what he got up nights for, he answered that he didn't know." The prisoner never talked with anybody after coming out of prison, unless to answer, in the simplest way, questions put to him.

Many persons remember the negro, with his saw, deaf, sad and sullen, seeking occupation about the wood-yards, during the half-year of his enlargement. Few stopped to converse with him, but the report of all confirms what has been testified by DEPUY. Those who knew the prisoner at all, were chiefly persons of his own caste.

MARY ANN NEWARK says that she saw him after he came out of prison, and he resided with her several days before the homicide. He did not recognize her in the street. "He sat still and silent when in the house, asked no questions, and answered quick and short-like. His manner of acting was queer-like; he never mentioned any name or spoke of anybody."

NATHANIEL HERSEY, the prisoner's old friend, found him changed, had to speak loud to him; "he appeared to be quite stupid." HERSEY asked him what ailed him; "he said he was deaf, that they rapped him over the head at the prison."

ROBERT FREEMAN discovered that he appeared downcast when he first came out of prison. He spoke to the prisoner, who took no notice. Robert took hold of his hand and asked him how he did. The witness says, "He appeared more dull and downcast, and I could not tell what the matter was; could never establish any communication with him."

Old ADAM GRAY, who knew him as a "pretty cunning kind of a boy," testifies: "I think there is a change in him. It doesn't seem to me that he knows as much as he did before he went to prison. He doesn't seem to talk as much, to have so much life, nor does he seem so sensible. Last winter he boarded with me two months. He would get up nights, take his saw and go out as if he was going to work, and come back again and go to bed. On such occasions he would try to sing, but I couldn't understand what he said. He made a noise appearing as if he was dancing."

Some three weeks before the homicide, the prisoner was boarding at Laura Willard's. The truthful and simple-minded DAVID

WINNER, seems to have been led by Providence to visit the house at that time. He says—

"I saw him first at his uncle, Luke Freeman's. He then appeared to be a *foolish* man. I asked if that was Sally's son. I did not know him. They told me it was. I said, he is very much altered. They said, he had just come out of State Prison. He had altered very much in his looks and behavior. He was sitting down in a chair in the corner, snivveling, snickering and laughing, and having a kind of simple look. I spoke to him; he didn't speak; I saw nothing for him to laugh at. I staid three days and three nights at Laura Willard's, and slept with William in the same bed. At night he got up and talked to himself; I couldn't understand what he said. He appeared to be foolish. I gave him a dollar to go down to Bartlett's to get a quarter of a pound of tea and two pounds of sugar, and to the market and get a beef steak. He went to market and got it all in beef steak. He got a dollar's worth of beef steak. When I asked what that was for, he said nothing, but laughed at me. He got up nights two or three times, and I felt cold and told Laura I wouldn't sleep with him any more, and I went and slept in the other room. I got afraid of him, and I wouldn't sleep with him any more. He sung when he got up nights, but you couldn't understand what he sung. There was no meaning in what he sung."

DEBORAH DEPUY says, "After he came out of prison, there was a change. If I talked to him very loud he would talk, say very little only to answer me. He didn't act cheerful, but very stupid; never said anything until I talked to him. He never talked to me as he did before he went to prison. He had a strange smile. He would laugh very hearty without anything to laugh at. He would'nt know what he was laughing at. He would knock at the door, and I would let him in, and he would sit down and laugh. I would ask what he was laughing at; he said he didn't know. When I asked questions, he would either answer yes, or no, or don't know. I asked him how his hearing was hurt. He said they struck him on the head with a board, and it seemed as if the sound went down his throat. I have asked him why he was so stupid. I don't think he is in his right mind now, nor that he has been since he came out. The reason is that he never used to act so silly, and sit and laugh so, before he went to prison."

His mother, SALLY FREEMAN, describes the change which had come over her child, in language simple and touching: "I never knew he was foolish or dumpish before he went to prison. After he came out of prison, he didn't act like the same child. He was changed and didn't appear to know anything. As to being lively after he came out, I didn't see any cheerfulness about him. He was either sitting or standing when I afterwards saw him, and when I asked him a question he would answer, but that is all he would say. He appeared very dull. He never asked me any questions after he came out, only the first time he saw me he asked me if I was well. From that time to this he has never asked me a question at all. He didn't come to see me more than half a dozen times. When he came, perhaps he would ask me how I did, and then sit down and laugh. What he laughed at was more than I could tell. He laughed as he does now. There was no reason why he should laugh. He was laughing to himself. He didn't speak of anything when he laughed. I never inquired what he laughed at. I didn't think he was hardly right, and he was so deaf I didn't want to. I asked him how he got deaf, and he told me his ear had fell down, or some such foolish answer he gave me. He would stay an hour or so. He generally sat still. I went to see him in the jail after he killed the Van Nest family, on the first day of the trial. He laughed when I went in, and said he was well. I talked to him. I asked him if he knew what he had been doing. He stood and laughed. I asked him how he came there. He didn't say much of anything, but stood and laughed. When I went away he didn't bid me good-bye nor ask me to come again. I have never been to see him since, and have never received any message from him of any kind since he has been in jail. I don't know that he noticed me when I was on examination before. I don't think he is in his right mind, or that he has been since he came out of prison. The reason is that he acts very foolish, and don't seem as though he had any senses."

You will remember that we have seen the prisoner a smart, bright, lively, cheerful, and playful youth, attending Deborah Depuy at balls, parties, and rides; for negroes enjoy such festivi-

ties as much and even more than white men. Deborah says he no longer attends. But from the testimony of JOHN DEPUY we find him at a dance in the house of Laura Willard, on the night before the slaughter of the Van Nest family. The scene was the same as before. There was music, and gallantry, and revelry, and merriment, and laughing, and dancing. But while all others were thus occupied, where was the prisoner, and how was he engaged? He was leaning against the wall, sullen, gloomy, silent, morose; pressing with his hand the knife concealed in his bosom, and waiting his opportunity to strike to the heart his brother-in-law and benefactor.

This is the change which had come over the prisoner when he emerged from the State Prison, as observed by the few of his kindred and caste, who had known him intimately before. How many white men, who knew him in his better days, have we heard confirm this testimony, by saying that they lost sight of him when he went to prison; that they met him in the street afterwards, downcast and sullen, with his saw in his hand, seeking casual occupation; that they spoke to him, but he did not hear or did not answer, and they passed on! Only two or three such persons stopped to inquire concerning his misfortunes, or to sympathize with him.

WILLIAM P. SMITH says: "The first time I saw him after he came out of prison, was in November. I asked him how he did. He made no answer. A little black boy with him told me he was deaf. I spoke to him to try and induce conversation, and finally gave it up; I couldn't make him understand. He appeared different from what I had known him before; appeared dumpish; didn't say much, and seemed to stand around. I met him once or twice in the street—merely met him—he noticed nothing."

DOCTOR HERMANCE did not know him before he went to prison. His peculiarities attracted the Doctor's attention, and he inquired the cause. The prisoner answered that he had been five years in the State Prison, and he wasn't guilty, and they wouldn't pay him. The Doctor says: "I discovered that he was very deaf, and inquired the cause of his deafness. He stated that his ears dropped. I thought his manners very singular and strange; and what he said about pay very singular and strange. He spoke in a very gloomy, despondent state of mind. There appeared to be a sincerity in his manner. The tone of his voice was a dull and monotonous tone. I thought at the time that he was deranged."

To complete this demonstration of the change, I have only to give you the character of the negro now, as he is described by several of the witnesses, as well on the part of the people as of the prisoner, who have seen him in prison, and as he is admitted to be.

WARREN T. WORDEN, Esq., an astute and experienced member of the bar, visited him in his cell in the jail, and says: "I formed an opinion then, that he knew nothing, and I expressed it. I do not believe him sane. I don't believe he understands what is going on around him. He would laugh upon the gallows as readily and as freely as he did in

his cell. He would probably know as much as a dumb beast who was taken to the slaughter house, as to what was to be done with him. If that state of mind and knowledge constitute insanity, then he is insane."

Doctor Fosgate, one of the soundest and most enlightened men in our community, who was his physician in the jail, and dressed his wounded hand, describes him as "insensible to pain, ignorant of his condition, and of course indifferent to his fate; grinning constantly idiotic smiles, without any perceptible cause, and rapidly sinking into idiocy."

Ira Curtis, who knew him in his youth, and has now carefully examined him in the jail, says: "He is incapable of understanding; he is part fool, bordering on idiocy; crazy and an idiot both, and crazy and insane both. If all the doctors in the world should say he was not a fool, I shouldn't believe them."

Doctor Briggs, who, it will be recollected, knew him at the age of eight or nine, examined him in the jail and says: "my opinion is and was, that he has less mind than when I knew him before—that his mind has become impaired."

William P. Smith, who knew him before he went to the State Prison and while there, patiently examined him in the jail, and says: "There was a change, a sensible change in the man. He didn't appear to know as much, to have as many ideas about him, as many looks of intelligence. I don't know as I could describe it very well. There was a slowness, a dullness; I thought what little intellect he had seemed to sink lower down, from some cause or other. His physical strength and vigor were good in the prison. He appeared active, strong and energetic. Now, his manner appears more dull, stupid and inattentive."

Dr. Van Epps says: "*Now* he appears to have the intellect of a child five years old."

Ethan A. Warden, the prisoner's earliest and fastest friend, says: "I look at him now and when he lived with me. He appears different. I could not get any thing that appeared like sorrow for what he had done, or feeling for the crime. I don't think him much above a brute."

John R. Hopkins says: "I think him in intelligence but little above the brute."

I need not pursue the parallel further. There is no dispute as to his present ignorance and debasement.

Dr. Dimon, a witness for the people, although he pronounces the prisoner sane, says he should think "he has not as much intellect as a child of fourteen years of age; is in some respects hardly equal to a child of three or four," and in regard to knowledge compares him with "a child two or three years old, who knows his A, B, C, and can't count twenty-eight."

Dr. Bigelow, a leading witness for the people, declares: "I believe him to be a dull, stupid, moody, morose, depraved, degraded negro, but not insane;" and Dr. Spencer, swearing to the same conclusion, says: "He is but little above the brute, yet not insane."

I submit to you, Gentlemen of the Jury, that by comparing the prisoner with himself, as he was in his earlier, and as he is in his later history, I have proved to you conclusively that he is visibly changed and altered in mind, manner, conversation and action, and that all his faculties have become disturbed, impaired, degraded and debased. I submit also that it is proved: *first*, that this change occurred between the sixteenth and the eighteenth years of his life, in the State Prison, and that therefore the change thus palpable, was not, as the Attorney General contends, effected by mere lapse of time and increase of years, nor by the natural development of latent dispositions: *Secondly*, that inasmuch as the convicts in the State Prison are absolutely abstemious from intoxicating drinks, the change was not, as the Attorney General supposes, produced by intemperance.

I have thus arrived at the *third* proposition in this case, which is, that

The Prisoner at the Bar is Insane.

This I shall demonstrate, *First*, by the fact already so fully established, that the prisoner is changed; *Secondly*, by referring to the predisposing causes which might be expected to produce insanity; *Thirdly*, by the incoherence and extravagance of the prisoner's conduct and conversation, and the delusions under which he has labored.

And now as to predisposing causes. The prisoner was born in this village, twenty-three years ago, of parents recently emerged from slavery. His mother was a woman of violent passions, severe discipline, and addicted to intemperance. His father died of *delirium tremens*, leaving his children to the neglect of the world, from which he had learned nothing but its vices.

Hereditary insanity was added to the prisoner's misfortunes, already sufficiently complicated. His aunt, Jane Brown, died a lunatic. His uncle, Sidney Freeman, is an acknowledged lunatic.

All writers agree, what it needs not writers should teach, that *neglect of education* is a fruitful cause of insanity. If neglect of education produces crime, it equally produces insanity. Here was a bright, cheerful, happy child, destined to become a member of the social state, entitled by the principles of our government to equal advantages for perfecting himself in intelligence, and even in political rights, with each of the three millions of our citizens, and blessed by our religion with equal hopes. Without his being taught to read, his mother, who lives by menial service, sends him forth at the age of eight or nine years to like employment. Reproaches are cast on his mother, on Mr. Warden, and on Mr. Lynch, for not sending him to school, but these reproaches are all unjust. How could she, poor degraded negress and Indian as she was, send her child to school? And where was the school to which Warden and Lynch should have sent him? There was no school for him. His few and wretched years date back to the beginning of my acquaintance here, and during all that time, with unimportant exceptions, there has been no school here for children of his caste. A school for colored children was never established here, and all the common schools were closed against them. Money would always procure instruction for my children, and relieve me from the responsibility. But the colored children, who have from time

to time been confided to my charge, have been cast upon my own care for education. When I sent them to school with my own children, they were sent back to me with a message that they must be withdrawn because they were black, or the school would cease. Here are the fruits of this unmanly and criminal prejudice. A whole family is cut off in the midst of usefulness and honors by the hand of an assassin. You may avenge the crime, but whether the prisoner be insane or criminal, there is a tribunal where this neglect will plead powerfully in his excuse, and trumpet-tongued against the "deep damnation" of his "taking off."

Again. The prisoner was subjected, in tender years, to severe and undeserved *oppression*. Whipped at Lynch's; severely and unlawfully beaten by Wellington, for the venial offence of forgetting to return a borrowed umbrella; hunted by the police on charges of petty offences, of which he was proved innocent; finally, convicted, upon constructive and probably perjured evidence, of a crime of which it is now universally admitted he was guiltless, he was plunged into the state prison at the age of sixteen, instead of being committed to a house of refuge.

Mere *imprisonment* is often a cause of insanity. Four insane persons have, on this trial, been mentioned as residing among us, all of whom became insane in the state prison. Authentic statistics show that there are never less than thirty insane persons in each of our two great penitentiaries. In the state prison the prisoner was subjected to severe corporeal punishment by keepers, who mistook a decay of mind and morbid melancholy for idleness, obstinacy and malice. Beaten, as he was, until the organs of his hearing ceased to perform their functions, who shall say that other and more important organs connected with the action of his mind did not become diseased through sympathy? Such a life, so filled with neglect, injustice and severity, with anxiety, pain, disappointment, solicitude, and grief, would have its fitting conclusion in a madhouse. If it be true, as the wisest of inspired writers hath said, "Verily, oppression maketh a wise man mad," what may we not expect it to do with a foolish, ignorant, illiterate man! Thus it is explained why, when he came out of prison, he was so dull, stupid, morose; excited to anger by petty troubles, small in our view, but mountains in his way; filled in his waking hours with moody recollections, and rising at midnight to sing incoherent

songs, dance without music, read unintelligible jargon, and combat with imaginary enemies.

How otherwise than on the score of madness can you explain the stupidity which caused him to be taken for a fool at Applegate's, on his way from the prison to his home? How else the ignorance which made him incapable of distinguishing the coin which he offered at the hatter's shop? How else his ludicrous apprehensions of being recommitted to the state prison for five years, for the offence of breaking his dinner knife? How else his odd and strange manner of accounting for his deafness by expressions all absurd and senseless, and varying with each interrogator: as to John Depuy, "that Tyler struck him across the ears with a plank, and knocked his hearing off, and that it never came back; that they put salt in his ear, but it didn't do any good, for his hearing was gone—all knocked off;" to the Rev. John M. Austin, "the stones dropped down my ears, or the stones of my ears dropped down;" to Ethan A. Warden, "got stone in my ears; got it out; thought I heard better when I got it out;" to Dr. Hermance, "that his ears dropped;" and to the same witness on another occasion, "that the hearing of his ears fell down;" to his mother, "that his ear had fell down;" to Deborah Depuy, "that Tyler struck him on the head with a board, and it seemed as if the sound went down his throat;" to Dr. Brigham, "that he was hurt when young, it made him deaf in the right ear;" also, "that in the prison he was struck with a board by a man, which made him deaf;" and also, "that a stone was knocked into, or out of his ear."

It is now perfectly certain, from the testimony of Mr. Van Arsdale and Helen Holmes, that the prisoner first stabbed Mrs. Van Nest in the back yard, and then entered the house and stabbed Mr. Van Nest, who fell lifeless at the instant of the blow. And yet, sincerely trying to give an account of the dreadful scenes exactly as they passed, the prisoner has invariably stated, in his answers to every witness, that he entered the house, stabbed Van Nest, went into the yard, and then, and not before, killed Mrs. Van Nest. It was in this order that he related the transaction to Warren T. Worden, to John M. Austin, to Ira Curtis, to Ethan A. Warden, to William P. Smith, to Dr. Van Epps, to James H. Bostwick, to Dr. Brigham, to Nathaniel Lynch, to Dr. Willard, to Dr. Bigelow, and to Dr. Spencer. How else than on the score of madness can you explain this con-

fusion of memory? and if the prisoner was sane, and telling a falsehood, what was the motive?

How else than on the score of a demented mind will you explain the fact, that he is without human curiosity; that he has never, since he came out of prison, learned a fact, or asked a question? He has been visited by hundreds in his cell, by faces become familiar, and by strangers, by fellow prisoners, by jailers, by sheriff, by counsel, by physician, by friends, by enemies, and by relations, and they unanimously bear witness that he never asked a question. The oyster, shut up within its limestone walls, is as inquisitive as he.

How else will you explain the mystery that he, who seven years ago had the capacity to relate connectively any narrative, however extended, and however complex in its details, is now unable to continue any relation of the most recent events, without the prompting of perpetual interrogatories, always leading him by known landmarks; and that when under such discipline he answers, he employs generally only the easiest forms, "Yes," "No," "Don't know."

Then mark the confusion of his memory, manifested by contradictory replies to the same question. Warren T. Worden asked him: "Did you go in at the front door? Yes. Did you go in at the back door? Yes. Were you in the hall when your hand was cut? Yes. Was your hand cut at the gate? Yes. Did you stab Mrs. Wyckoff in the hall? Yes. Did you stab Mrs. Wyckoff at the gate? Yes. Did you go out at the back door? Yes. Did you go out at the front door? Yes."

Ethan A. Warden asked him, "What made you kill the child?" "Don't know anything about that." At another time he answered, "I don't think about it; I didn't know it was a child." And again, on another occasion, "Thought—feel it more;" and to Dr. Bigelow and other witnesses, who put the question, whether he was not sorry he had killed the child, he replied, "It did look *hard*—I rather it was bigger." When the ignorance, simplicity, and sincerity of the prisoner are admitted, how otherwise than on the ground of insanity, can you explain such inconsistencies as these?

The testimony of Van Arsdale and Helen Holmes proves that no words could have passed between the prisoner and Van Nest, except these, "What do you want here in the house?"

spoken by Van Nest before the fatal blow was struck. Yet when inquired of by Warren T. Worden what Van Nest said to him when he entered the house, the prisoner said, after being pressed to an answer, that Van Nest said to him, "If you eat my liver, I'll eat yours;" and he at various times repeated to the witness the same absurd expression. To the Rev. John M. Austin he made the same statement that Van Nest said, "If you eat my liver, I'll eat your liver;" to Ira Curtis the same; to Ethan A. Warden the same; to Lansingh Briggs the same; and the same to almost every other witness. An expression so absurd under the circumstances could never have been made by the victim. How otherwise can it be explained than as the vagary of a mind shattered and crazed?

The prosecution, confounded with this evidence, appealed to Dr. Spencer for relief. He, in the plenitude of his learning, says, that he has read of an ancient and barbarous people, who used to feast upon the livers of their enemies, that the prisoner has not imagination enough to have invented such an idea, and that he must have somewhere heard the tradition. But when did this demented wretch, who reads "woman" for "admirable," and "cook" for "Thomson," read Livy or Tytler, and in what classical circle has he learned the customs of the ancients? Or, what perhaps is more pertinent, who were that ancient and barbarous people, and who was their historian?

Consider now the prisoner's earnest and well-attested sincerity in believing that he could read, when either he never had acquired, or else had lost, the art of reading. The Rev. Mr. Austin visited him in jail, at an early day, asked him whether he could read, and being answered that he could, gave him a Testament. In frequent visits afterwards, when the prisoner was asked whether he had read his Testament, he answered "Yes," and it was not until after the lapse of two months that it was discovered that he was unable to spell a monosyllable.

Ira Curtis says: "I asked him if he could read; he said, 'Yes,' and commenced reading, that is, he pretended to, but he didn't read what was there. He read, '*Oh! Lord—mercy—Moses*'—and other words mixed up in that way. The words were not in the place where he seemed to be reading, and it was no reading at all, and some words he had over I had never heard before. I took the book from him, saying, 'You don't read right.' He said, 'Yes, I

do.' I said, 'William, you can't read.' He said, 'I can.' I gave him a paper, pointed him to the word 'admirable'—he pronounced it 'woman.' I pointed to the word 'Thompson'—he read it 'cook.' He knew his letters, and called them accurately, but could not combine them. I asked him to count. He commenced and counted from one up to twenty, hesitated there some time, and finally counted up to twenty-eight, and then jumped to eighty. Then I started him at twenty, and he said 'one.' I told him to say 'twenty-one'; but he seemed to have difficulty in saying 'twenty-one.' He tried to go on. He did count up to twenty regularly, by hesitating; but never went higher than twenty-eight correctly. I asked him how much two times four was—he said, 'eighty.' How much two times three was—he said, 'sixty or sixty-four.'" Many other witnesses on both sides of this cause, Mr. Austin, Mr. Hopkins, Mr. Hotchkiss, Mr. Worden, Mr. Smith, Dr. Van Epps, Dr. Brigham, Dr. McCall, Dr. Coventry, Dr. Willard, Dr. Bigelow, Dr. Clary and Dr. Spencer, have with varied ingenuity, sought to detect a fraud in this extreme ignorance and simplicity, and have unanimously testified to you that the simpleton sincerely believes he reads accurately, and as honestly thinks he counts above twenty-eight correctly, while in truth he cannot advance above that number in counting, and cannot read at all. Yet he must, at least, have learnt in the Sunday School that he could not read, and the keepers of the prison show that he put up his daily manufacture of rings and of skeins of thread, in quantities accurately counted, to the number of several dozen.

I think you will agree with Doctor Hun, that there is not a sane man twenty-three years of age, brought up in this country, who does not know whether he can read, and who cannot count twenty-nine.

Mark his indifference and stupidity concerning his situation. Ethan A. Warden asked him, "Do you expect to be hung? 'Don't think about it.' Do you like to be in jail? 'Pretty well.' Is it a good place? 'Yes.' Do you sleep well? 'Yes.' Do you think of what you've done? 'No.'"

William P. Smith asked him in the jail if he knew whether he was in jail or in prison. He hesitated some time, and finally thought he was in the jail, but wasn't sure. "Do you know what you are confined here for?" "No."

Dr. Van Epps asked him what he was put in jail for. "Don't

know." Afterward he seemed to recollect himself and said "*horse.*"

Dr. Brigham says, "I tried in various ways to ascertain if he knew what he was to be tried for. I tried repeatedly and never could get a distinct answer. It was often 'I don't know,' and sometimes '*a horse.*' I asked him at one time, what his defence would be. Shall we say that you did not kill? He answered very quickly, looking up, 'No.' But may we not say so? 'No, that would be wrong; I did do it.' Some one asked him when others were there, May we not say you are crazy? 'I can't go so far as that.' I asked him if he had employed any body to defend him, and said, Mr. Seward is now here, you had better employ him and tell him what to say. Here is Mr. Seward, ask him. He said in a reading tone, 'Governor Seward, I want you to defend me,' repeating the words I had told him to use."

When on trial for stealing a horse, six years ago, he had counsel of his own choice, and was treated and tried as a man who understood and knew his rights, as indeed it is proved that he did. Here, his life is at stake. He does not know even the name of a witness for or against him, although his memory recalls the names of those who testified against him on his trial for stealing the horse, and the very effect of their testimony.

Dr. Brigham says, "I asked him what he could prove in his defence. He replied, '*the jury* can prove that I was in prison five years for stealing a horse, and didn't steal it.'"

When asked if he is not sorry for crimes so atrocious, he answers always, either, "No," or "Don't know."

On the very day when he was to be arraigned, he had no counsel; and, as Mr. Austin testifies, was made to understand, with difficulty, enough to repeat like a parrot a consent that I should defend him. The Attorney General says, the prisoner "knew he was guilty, and that counsel could do nothing for him. If he was as wise and as intelligent as Bacon himself, he could give no instructions to counsel that would help him." Aye, but is he as wise and as intelligent as Bacon? Has he any intelligence? No, gentlemen, no man ever heard of a sane murderer in whose bosom the love of life and the fear of death were alike extinguished.

The accused sat here in court, and saw Dr. Bigelow on the stand, swearing away his life, upon confessions already taken. Dr. Bigelow followed him from the court to his cell, and there the prisoner,

with child-like meekness, sat down on his bench and confessed further for hours, all the while holding the lamp by whose light Dr. Bigelow recorded the testimony, obtained for the purpose of sealing his fate beyond a possible deliverance.

He is asked about the Judges here, is ignorant where they sit, and can only remember that there is a good looking man on the elevated stage, which he is told is the bench. He is asked what they say in court, and he says "They talk, but I hear nothing;" what or whom are they talking about, and he says "Don't know;" whom he has seen here, and he recalls not his judges, the jury, the witnesses, or the counsel, but only the man who gives him tobacco.

From his answers to Mr. Hopkins, Mr. Austin, Mr. Smith, and others, as well as from the more reliable testimony of his mother, of his brother-in-law, of Mr. Lynch, Mr. Warden, Mr. Hotchkiss, and others, we learn that in his childhood and in State Prison, he attended Sunday School and divine worship. Yet we find him at the age of twenty-three, after repeated religious instructions, having no other idea of a supreme being and of a future state than that Heaven is a place above, and God is above, but that God is no more than a man or an animal. And when asked by Mr. Hopkins what he knew about Jesus Christ, he answered that he once came to Sunday School in the State Prison. What did he do there? "Don't know." Did he take a class there? "Don't know." Did he preach? "Don't know." Did he talk? "Don't know." The prisoner gave the same answers to the Rev. Mr. Austin, to Mr. Hopkins, his Sunday School teacher, and to Dr. Brigham.

Mr. Horace Hotchkiss says: "I asked him in the jail, If you shall be convicted and executed, what will become of you? He answered, 'Go to Heaven.' I asked him why, and he replied, 'Because I am good.'" Dr. Brigham inquired: "Do you know anything of Jesus Christ?" "I saw him once." "Did you kill him at Van Nest's?" The poor fool (as if laboring with some confused and inexplicable idea) said, "Don't know." I think, gentlemen, that you will agree with Dr. Hun, Dr. Brigham, and the other intelligent witnesses, who say that, in their opinion, there is no sane man of the age of twenty-three, who has been brought up in church-going families, and been sent to Sunday

School, whose religious sentiments would, under such circumstances, be so confused and so absurd as these.

To the Rev. Mr. Austin, he said after his arrest, "If *they will let me go this time*, I will try and do better." And well did that witness remark, that such a statement evinced a want of all rational appreciation of the nature and enormity of his acts, for no man twenty-three years old, possessing a sound mind, and guilty of four-fold murders, could suppose that he would be allowed to escape all punishment by simply promising, like a penitent child, that he would "do better."

Mark his insensibility to corporeal pain and suffering. In the conflict with Mrs. Wykoff, he received a blow which divided a sinew in his wrist, and penetrated to the bone. The physicians found him in the jail with this wound, his legs chained, and heavy irons depending unequally from his knees. Yet he manifested absolute insensibility. Insane men are generally very insensible to pain. The reason is, that the nervous system is diseased, and the senses do not convey to the mind accurate ideas of injuries sustained. Nevertheless, this passes for nothing with Dr. Spencer, because there was an ancient sect of philosophers who triumphed, or affected to triumph, over the weakness of our common nature, and because there are modern heroes who die without a groan on the field of battle. But in what school of philosophy, or in what army, or in what battle-ship was this idiot trained, that he has become insensible to pain, and reckless of death?

I proposed, gentlemen, at the close of the testimony, that you should examine the prisoner for yourselves. I regret that the offer was rejected. You can obtain only very imperfect knowledge from testimony in which the answers of the prisoner are given with the freedom and volubility of reporters. We often judge more justly from the tone, manner, and spirit of those with whom we converse, than from the language they use. All the witnesses agree that the prisoner's tone and modulation are slow, indistinct, and monotonous. His utterance, in fact, is that of an idiot, but on paper it is as distinct as that of Cicero.

I have thus shown you, gentlemen, the difficulties which attend you in this investigation, the law concerning insanity, the nature and characteristics of that disease, the great change which the prisoner has undergone, and some of those marked extravagances which denote lunacy. More conclusive evidence yet remains;

and *first*, the delusion by which the prisoner was overpowered, and under whose fearful spell his crimes were committed.

Delusion does not always attend insanity, but when found, it is the most unequivocal of all proofs. I have already observed that melancholy is the first stage of madness, and that it long furnished the name for insanity. In the case of Hatfield, who fired at the King in Drury-Lane Theatre, Lord Erskine, his counsel, demonstrated that insanity did not consist in the absence of any of the intellectual faculties, but in delusion; and that an offender was irresponsible, if his criminal acts were the immediate, unqualified offspring of such delusion. Erskine there defined a *delusion* to consist in deductions from the *immovable* assumption of matters *as realities*, either without any foundation whatever, or so distorted and disfigured by fancy as to be nearly the same thing as their creation.

The learned men here have given us many illustrations of such delusions; as that of the man who believes that his legs are of glass, and therefore refuses to move, for fear they will break; of the man who fancies himself the King of the French; or of him who confides to you the precious secret that he is Emperor of the world. These are palpable delusions; but there are others equally, or even more fatal in their effects, which have their foundation in some original fact, and are thus described by Dr. Ray, at page 210 of his work:

"In another class of cases, the exciting cause of homicidal insanity is of a moral nature, operating upon some peculiar physical predisposition, and sometimes followed by more or less physical disturbance. Instead of being urged by a sudden, imperious impulse to kill, the subjects of this form of the affection, after suffering for a certain period much gloom of mind and depression of spirits, feel as if bound by a sense of necessity to destroy life, and proceed to the fulfilment of their destiny with the utmost calmness and deliberation. So reluctant have courts and juries usually been to receive the plea of insanity in defence of crime, deliberately planned and executed by a mind in which no derangement of intellect has ever been perceived, that it is of the greatest importance that the nature of these cases should not be misunderstood."

Our learned witnesses have given us various definitions of a delusion. Dr. Hun's is perhaps as clear and accurate as any: "It is a cherished opinion opposed by the sense and judgment of all mankind." In simple speech, it is what is called the predominance of ONE IDEA, by which reason is subverted. I shall now show you such a predominance of one idea, as will elucidate the progress of this maniac, from the first disturbance of his mind to the dreadful catastrophe on the shore of the Owasco lake. That delusion is a star to guide your judgments to an infallible conclusion, that the

prisoner is insane. If you mistake its course, and consign him to a scaffold, it will rest over his grave, indicating him as a martyr, and you as erring or unjust judges.

In April, 1840, Mrs. Godfrey, who resides in the town of Sennett, on the middle road, four miles north-east of Auburn, lost a horse. Jack Furman, a hardened offender, stole the horse. For some purpose, not now known, he put him into the care of the prisoner, who was seen with the horse. Both Furman and Freeman were arrested. The former was the real thief and Freeman constructively guilty. Freeman was arrested by Vanderheyden, taken into an upper chamber, and *there declared his innocence of the crime.* He was nevertheless committed to jail. *All* the police, and the most prejudiced of the witnesses for the people, have testified their entire conviction that the prisoner was innocent. Furman was selected by favor as a witness for the people. Freeman, while in jail, comprehending his danger, and conscious of his innocence, dwelt upon the injustice, until, having no other hope, he broke prison and escaped. Being retaken, he assigned, as the reason for his flight, that Jack Furman stole the horse, and was going to swear him into the state prison. The result was as he apprehended. He was convicted by the perjury of Furman, and sentenced to the state prison for five years. This was the *first* act in the awful tragedy of which he is the hero. Let judges and jurors take warning from its fatal consequences. How deeply this injustice sank into his mind, may be seen from the testimony of Aretas A. Sabin, the keeper, who said to him on the day he entered the prison, "I am sorry to see you come here so young." The prisoner wept. Well would it have been, if this, the last occasion on which the prisoner yielded to that infirmity, had, ominous as it was of such fatal mischief, been understood and heeded.

A year passed away; and he is found in the prison, neglecting his allotted labor, sullen and morose.

James E. Tyler, the keeper, says: "I had talked to him, and found it did no good. I called him up to punish him—told him I was going to punish him for not doing more work, and should do so repeatedly until he should do more work. When I talked with him about doing more work, he gave as an excuse, '*that he was there wrongfully, and ought not to work.*'"

The excuse aggravated the severity of his castigation. Such was penitentiary cure for incipient insanity.

Van Kuren, a foreman in one of the shops at the prison, represents the prisoner as sullen, intractable, and insolent. He caused him to be punished, although he then dis-

covered, on all occasions, that idiotic laugh, without cause or motive, which marks the maniac.

Silas E. Baker remarked the same idiotic laugh when the prisoner was at his work, in his cell, and in the chapel.

William P. Smith, a foreman in the prison, remarked his peculiarities, but unfortunately was not then led to their true cause.

Theron R. Green, as has been already seen, discovered the same peculiarities, divined their cause, held him irresponsible, and gave an unheeded warning against his enlargement.

The discipline of the prison forbids conversation between convict and convict, and between keepers and prisoners. The iron that had entered the prisoner's soul was necessarily concealed, but Depuy, and Warden, and Green, who thought him changed then, as well as Smith, Van Kuren, Baker, and Tyler, who regarded him only as ignorant and obstinate, give conclusive evidence that the ruin of his mind was betrayed in a visible change of his appearance, conduct and character.

The time at length arrived, when the secret could no longer be suppressed. The new chaplain, the Rev. Alonzo Wood, was in the agent's office when the prisoner was discharged. Two dollars, the usual gratuity, was offered him, and he was asked to sign a receipt. "*I ain't going to settle so.*" For five years, until it became the ruling thought of his life, the idea had been impressed upon his mind, that he had been imprisoned wrongfully, and would, therefore, be entitled to payment on his liberation. This idea was opposed "*by the judgment and sense of all mankind.*" The court that convicted him pronounced him guilty, and spoke the sense and judgment of mankind. But still he remained unconvinced. The keepers who flogged him pronounced his claim unjust and unfounded, and they were exponents of the "sense and judgment of all mankind." But imprisonment, bonds and stripes, could not remove the one inflexible idea. The agents, the keepers, the clerk, the spectators, and even the reverend chaplain, laughed at the simplicity and absurdity of the claim of the discharged convict, when he said, "*I've worked five years for the state, and ain't going to settle so.*" Alas! little did they know that they were deriding the delusion of a maniac. Had they been wise, they would have known that—

"So foul a sky clears not without a storm."

The peals of their laughter were the warning voice of human nature for the safety of the family of Van Nest.

Thus closes the second act of the sad drama.

The maniac reaches his home, sinks sullenly to his seat, and

hour after hour relates to JOHN DEPUY the story of his wrongful imprisonment, and of the cruel and inhuman treatment which he had suffered; inquires for the persons who had caused him to be unjustly convicted, learns their names, and goes about drooping, melancholy and sad, dwelling continually upon his wrongs, and studying intensely in his bewildered mind how to obtain redress. Many passed him, marking his altered countenance and carriage, without stopping to inquire the cause. Doctor HERMANCE alone sought an explanation: "I met him about the first of December last; I thought his manner very singular and strange. I inquired the cause. He told me that he had been in the prison for five years, and that he wasn't guilty, and that they wouldn't pay him. I met him afterward in the street, again remarked his peculiarities, and inquired the cause. He answered as before, that he had been in State Prison five years wrongfully, and they wouldn't pay him."

The one idea disturbs him in his dreams and forces him from his bed; he complains that he can make no gain and can't live so; he dances to his own wild music, and encounters imaginary com batants.

Time passes on until February. He visits Mrs. Godfrey at her house in Sennett. He enters the house, deaf, and stands mute. "I gave him a chair," says Mrs. Godfrey; "he sat down. I asked which way he was travelling. He wanted to know if that was the place where a woman had a horse stole five years before. I told him it was. He said he had been to prison for stealing the horse, and didn't steal it neither. I told him I knew nothing about that, whether it was he or not. He said he'd been to prison for stealing a horse, and didn't steal it, and he wanted a settlement. Johnson, who was there, asked him if he should know the horse if he should see it. 'No.' 'Do you want the horse?' 'No. Are you the man who took me up? Where is the man who kept the tavern across the way and helped to catch me?' 'He is gone.' I asked him if he was hungry. He said he didn't know but he was. I gave him some cakes, and he sat and ate them."

Here was exhibited at once the wildness of the maniac, and the imbecility of the demented man. His delusion was opposed to "the sense and judgment of all mankind." Mrs. GODFREY and Mr. JOHNSON exposed its fallacy. But still the one idea remained

unconquered and unconquerable. The maniac who came to demand pay for five years' unjust imprisonment was appeased with a morsel of cake.

He was next seen at Mr. Seward's office, a week or ten days days before the murder. He asked if that was a 'squire's office, and said he wanted a warrant. Mr. Parsons, the clerk, says: "I didn't understand until he had asked once or twice. I asked him what he wanted a warrant for. He said for the man who had been getting him into prison, and he wanted to get damages. I told him the Justices' offices were up street, and he went away."

Next we find him at the office of Lyman Paine, Esq., Justice, on the Saturday preceding the death of Van Nest. Mr. Paine says: "He opened the door, came in a few feet, and stood nearly a minute with his head down, *so*. He looked up and said: '*Sir, I want a warrant.*' 'What for.' He stood a little time, and then said again: '*Sir, I want a warrant.*' 'What do you want a warrant for?" He stood a minute, started, and came up close to me, and spoke very loud: '*Sir, I want a warrant.* I am very deaf, and can't hear very well.' I asked him in a louder voice what he wanted a warrant for. 'For a man who put me to State Prison.' 'What is your name?' '*William Freeman; and I want a warrant for the man who put me to prison.*' I said: 'If you've been to prison, you have undoubtedly been tried for some offence.' 'I have; it was for stealing a horse, but I didn't steal it. I've been there five years.' I asked who he wanted a warrant for. He told some name—I think it was Mr. Doty." [You will remember, gentlemen, that Mr. Doty, Mr. Hall, and Mrs. Godfrey, all of Sennett, and Jack Furman, of this town, were the witnesses against him.] "I told him if he wanted a warrant, it must be for perjury—he must give me the facts and I would see. He stood two or three minutes and then said: '*Sir, I want a warrant.*' I asked further information. He stood a little while longer, took out a quarter of a dollar, threw it on the table, and said: '*I demand a warrant*'—appeared in a passion, and soon after went out. He returned in the afternoon, said he would have a warrant, and gave the names of Mr. Doty and Mrs. Godfrey."

Mr. Paine saw, in all this, evidence of stupidity, ignorance, and malice, only, but not of insanity. But, gentlemen, if he could have looked back to the origin of the prisoner's infatuation, and

forward to the dreadful catastrophe on the shore of the Owasco Lake, as we now see it, who can doubt that he would then have pronounced the prisoner a maniac, and have *granted*, not the warrant he asked, but an order for his commitment to the County Jail, or to the Lunatic Asylum?

Denied the process, to which he thought himself entitled, he proceeded a day or two later to the office of JAMES H. BOSTWICK, Esq., another justice. "I saw him," says this witness, "a day or two before the murder. He came, and said he wanted a warrant. I asked for whom. He replied: '*for those that got me to prison. I was sent wrongfully. I want pay.*' I asked him who the persons were. He mentioned a widow and two men. He mentioned Mrs. Godfrey as the widow woman, Jack Furman and David W. Simpson as the two men." (Simpson was the constable by whom he was arrested the second time for stealing the horse.) Mr. BOSTWICK declined issuing the warrant, and informed him there was no remedy, and again expounded to him the "sense and judgment of all mankind," in opposition to his delusion.

According to the testimony of JOHN DEPUY, the prisoner was agitated by alternate hope and despair in regard to his redress. At one time he told DEPUY, that he'd got it all fixed, and wanted him to go down to the justice's office and see that he was paid right. At another, he told DEPUY that the "Squires wouldn't do nothing about it; that he could get no warrant, nor pay, and he couldn't live so."

Then it was that the one idea completely overthrew what remained of mind, conscience, and reason. If you believe HERSEY, Freeman, about a week before the murder, showed him several butcher knives, told him he meant to kill Depuy, his brother-in-law, for trivial reasons, which he assigned, and said that he had found the folks that put him in prison, and meant to kill them. HERSEY says: "I asked him who they were. He said, *they were Mr. Van Nest*, and said no more about them. He didn't say where they lived, and nothing about any other man, woman, or widow." This witness admits that he suppressed this fact on the preliminary examination.

If you reject this testimony, then there is no evidence that he ever had any forethought of slaying Van Nest. If you receive it, it proves the complete subversion of his understanding; for John G. Van Nest, and all the persons slain, resided not in Sennett, nor

in Auburn, but four miles south of the latter place, and eight miles from the house of Mrs. Godfrey. The prisoner, within a week before the crime, named to the magistrates every person who was concerned in his previous conviction. We have shown that neither John G. Van Nest, nor any of his family or kindred, nor any person connected with him, was, or could have been, a party, a magistrate, a witness, a constable, a sheriff, a grand juror, attorney, petit juror, or judge, in that prosecution, or ever knew or heard of the prosecution, or ever heard or knew that any such larceny had been committed, or that such a being as the prisoner existed. Mrs. Godfrey and the witnesses on the former occasion, became known to the remaining family and relatives of Van Nest, here in court, for the first time, during these trials.

You will remember that Erskine's test of a delusion that takes away responsibility is—*that the criminal act must be the immediate, unqualified offspring of the delusion.* I shall now proceed to show, that such is the fact in the present case.

The first witness to whom the prisoner spoke concerning the deeds which he had committed was George B. Parker. This was at Phenix, Oswego county, immediately after his arrest, within twenty hours after the perpetration of the crime. "I pushed very hard for the reasons," says the witness, "what he had against Van Nest. '*I suppose you know I've been in State Prison five years*,' he replied. 'I was put there innocently, I've been whipped and knocked and abused, and made deaf, and there won't any body pay me for it.'"

Vanderheyden arrived soon afterwards. He says: "I called the prisoner aside, and said to him: 'Now we're alone, and you may as well tell me how you came to commit this.' He says to me: '*You know there is no law for me.*' I asked him what he meant by that '*no law!*' He said, 'they ought to pay me.'"

Ethan A. Warden followed him into his cell in the jail, and asked him, "When you started from home what did you go up there for?—'*I must go.*' Why must you go? '*I must begin my work.*' What made you do it? '*They brought me up so.*' Who brought you up so? '*The State.*' They didn't tell you to kill, did they? '*Don't know—won't pay me.*' Did you know these folks before you went to prison? '*No.*' Was you there a few days before to get work? '*Yes.*' Did they say anything to offend you or make you angry? '*No.*' What made you kill them; what did you do it for? '*I must begin my work.*' Didn't

you expect to be killed? '*Didn't know but I should.*' If you expected to be killed what made you go; did you go to get money? '*No.*' Did you expect to get money? '*No.*' Did you intend to get the horse? '*No.*' How did you come to take him? '*Broke my things,* (meaning knives)—*hand was cut—came into my mind—take the horse—go—and—get so—could do no more work.*' If you had not broke your things, what would you have done? '*Kept to work.*' Did you mean to keep right on? '*I meant to keep to work.*' Would you have killed *me* if you had met me? ''*Spose I should.*' What made you begin at that house? '*Stopped two or three places, thought it wasn't far out enough to begin.*' Are you not sorry you killed so many? '*Don't think anything about it.*'"

The prisoner has invariably given similar answers to every person who has asked him the motive for his crime.

Warren T. Worden, Esq., says, "I asked him why he took the horse? He answered, '*My hand was hurt, and I couldn't kill any more.*' I asked him why he killed them? and he answered, '*Why did they send me to State Prison when I wasn't guilty.*' And in making this reply he trembled, and I thought he was going to weep. I told him they would hang him now; he showed no feeling."

Dr. Fosgate says that Dr. Hurd asked him what he killed those folks for? He replied, "*They put me in prison.*"

John R. Hopkins says, "I turned his attention to the idea of pay—if he had got his pay for his time in prison? That question raised him up, and he looked comparatively intelligent, and brightened up his whole countenance. He said '*No.*' Who ought to pay you? '*All of them.*' Ought I? He looked up with a flash of intelligence, said nothing, but looked intently at me, and the answer was conveyed by the look. I asked if this man, (pointing to Hotchkiss) ought to pay him? He looked at him, as at me, and said, '*Do what's right,*' or '*we'll do what's right.*' We then spoke about his trial, and he was stupid and dull again."

The Rev. J. M. Austin says: "I put questions to find his motive for killing that family. His answers were very broken and incoherent, but invariably referred to his being in prison innocently. Had the persons you killed, anything to do with putting you into prison? '*No.*' Did you know their names? '*No.*' Why did you kill that particular family? No direct answer, but something

about being put in prison wrongfully. Do you think it right to kill people who had no hand in putting you in prison? He gave an incoherent reply. I gathered, '*shall do something to get my pay.*' How much pay ought you to have? '*Don't know.*' Was it right to kill those innocent persons for what had been done by others? '*They put me in prison.*' Who did—The Van Nest Family? '*No.*' Why then did you kill them? Did you think it right to kill that innocent child? I understood from his gestures in reply, that he was in a labyrinth, from which he was incapable of extricating himself. How did you happen to go that particular night? '*The time had come.*' Why did you enter that particular house? '*I went along out and thought I might begin there.*' I asked if he ever called on Mrs. Godfrey. He said, '*I went to Mrs. Godfrey to get pay, and she wouldn't pay me. I went to Esquires Bostwick and Paine and they wouldn't do nothing about it.*"

Mr. Ira Curtis, says: "I asked him how he came up there. '*I went up south a piece.*' How far? '*Stopped at the house beyond there.*' What for? '*To get a drink of water.*' What did you go into Van Nest's house for? '*Don't know.*' Did you go in to murder or kill them? '*Don't know.*' Was it for money? '*Didn't know as they had any.*' Did you kill the child? '*They said I killed one, but I didn't.* What did you kill them for? '*You know I had my work to do.*' Had you anything against these people? '*Don't know.*' Why didn't you commence at the other place? '*Thought it wasn't time yet.*' He said, '*they wouldn't pay him. He had been imprisoned and they wouldn't pay him.*'"

Dr. Hermance says: "Dr. Pitney asked him how he happened to go up. '*It rained and I thought it would be a good time.*' Why did you go to Van Nest's, and not to some other family? No answer. Why didn't you come and kill me? He smiled but gave no answer. Don't you think you ought to be hung for killing Van Nest and his family? The same question was repeated authoritatively, and he replied: '*Sent to prison for nothing—ought I to be hung?*' Suppose you had found some other person, would you have killed any other as well as Van Nest? '*Yes.*' I asked why did you kill Van Nest and his family? '*For that horse.*' What do you mean by killing '*for that horse?*' '*They sent me to prison and they won't pay me.*' Had Van Nest anything to do with sending you to prison? '*No.*'"

Dr. Briggs says: "When I repeated the question, why did you

kill Van Nest? he replied, '*Why was I put in prison for five years?*'"

William P. Smith, asked: "Why did you kill those people? '*I've been to prison wrongfully five years. They wouldn't pay me.* Who? '*The people, so I thought I'd kill somebody.*' Did you mean to kill one, more than another? '*No.*' Why did you go so far out of town? '*Stopped at one place this side; wouldn't go in—couldn't see to fight, 'twas dark, looked up street, saw a light in next house, thought I'd go there, could see to fight.*' Don't you know you've done wrong? '*No.*' Don't you think 'twas wrong to kill the child? After some hesitation, he said, '*Well—that looks kind o'h-a-r-d.*' Why did you think it was right? '*I've been in prison five years for stealing a horse, and I didn't do it; and the people won't pay me—made up my mind, ought to kill somebody.*' Are you not sorry? '*No.*' How much pay do you want? '*Don't know—good deal.*' If I count you out a hundred dollars, would that be enough? *He thought it wouldn't.* How much would be right? '*Don't know.*' He brightened up, and finally said he thought '*about a thousand dollars would be about right.*'"

It would be tedious to gather all the evidence of similar import. Let it suffice, that the witnesses who have conversed with the prisoner, as well those for the people as those for him, concur fully in the same statement of facts, as to his reasons and motives for the murders. We have thus not merely established the existence of an insane delusion, but have traced directly to that overpowering delusion, the crimes which the prisoner has committed.

How powerful that delusion must have been, may be inferred from the fact that the prisoner, when disabled, desisted from his *work*, and made his retreat to his friends in Oswego county, not to escape from punishment for the murders, but, as he told Mr. E. A. Warden, to wait till his wounded hand should be restored, that he might resume his dreadful butchery; and, as he told Dr. Bigelow, because he couldn't "handle his hand." The intenseness of this delusion exceeds that under which Hatfield assailed the king; that which compelled Henriette Cornier to dissever the head of the child entrusted to her care; and that of Rabello, the Portuguese, who cut to pieces with his axe the child who trod upon his feet.

The next feature in the cause which will claim your attention,

gentlemen of the jury, is the MANNER AND CIRCUMSTANCES OF THE ACT ITSELF.

In Ray's Medical Jurisprudence, at page 224, are given several tests by which to distinguish between the homicidal maniac and the murderer.

We shall best consider the present case by comparing it with those tests:

I. "There is the *irresistible motiveless* impulse to destroy life." Never was homicide more *motiveless*, or the impulse more completely irresistible, than in the present case, as we have learned from the testimony already cited.

II. "In nearly all cases, the criminal act has been preceded, either by some well marked disturbance of the health, or by an irritable, gloomy, dejected, or melancholy state; in short, by many of the symptoms of the incubation of mania." How truly does this language describe the condition of the prisoner during the brief period of his enlargement!

III. "The impulse to destroy is powerfully excited by the sight of murderous weapons—by favorable opportunities of accomplishing the act—by contradiction, disgust, or some other equally trivial and even imaginary circumstance."

While we learn from HERSEY's testimony, that the prisoner kept a store of knives fit for such a deed, we find in the denial of his demands for settlement, for pay, and for process, by Mrs. GODFREY, and the magistrates, the contradiction and causes of disgust here described.

IV. "The victims of the homicidal monomaniac are either entirely unknown or indifferent to him, or they are amongst his most loved and cherished objects."

Freeman passed by his supposed oppressors and persecutors, and fell upon a family absolutely indifferent, and almost unknown to him, while he reserved the final stroke for his nearest and best friend, and brother-in-law.

V. "The monomaniac sometimes diligently conceals and sometimes avows his purpose, and forms schemes for putting it into execution, testifying no sentiment of grief."

The prisoner concealed his purpose from all but HERSEY. He purchased the knife which he used, in open day, at a blacksmith's shop, in the presence of persons to whom he was well known, and ground it to its double edge before unsuspecting witnessess, as

coolly and deliberately as if it were to be employed in the shambles. He applied at another blacksmith's shop where he was equally well known, to have another instrument made. He shaped the pattern in a carpenter's shop, carried it to the smith, disagreed about the price, and left the pattern upon the forge, in open sight, never thinking to reclaim it, and it lay there until it was taken by the smith before the coroner's inquest, as an evidence of his design. So strange was his conduct, and so mysterious the form of the knife which he required, that Morris, the smith, suspected him, and told him that he was going to *kill somebody;* to which he answered with the nonchalance of the butcher, "*that's nothing to you if you get your pay for the knife.*" On the two days immediately preceding the murder, he is found sharpening and adjusting his knives at a turner's shop, next door to his own dwelling, in the presence of persons to whom he is well known, manifesting no apprehension, and affecting no concealment.

The trivial concerns of his finances and occupation are as carefully attended to, as if the murder he was contemplating had been an ordinary and lawful transaction. Hyatt demands three shillings for the knife. The prisoner cheapens until the price is reduced to eighteen pence, with the further advantages that it shall be sharpened and fitted to a handle. Hyatt demands sixpence for putting a rivet into his knife. He compromises, and agrees to divide the labor and pay half the price. He deliberately takes out his wallet and lays down three cents for Simpson the turner, for the use of the grindstone. On the very day of the murder he begs some grease at the soap factory to soften his shoes, and tells Aaron Demun that he is going into the country to live in peace. At four o'clock in the afternoon he buys soap at the merchant's for Mary Ann Newark, the poor woman at whose house he lived. He then goes cautiously to his room, takes the knives from the place of their concealment under his bed, throws them out of the window to avoid exposure to her observation, and when the night has come, and the bells are ringing for church, and all is ready, he stops to ask the woman whether there is any chore to be done. She tells him, none, but to fill the tub with snow. He does it, as carefully as if there were no commotion in his mind, and then sallies forth, takes up his instruments, and proceeds on his errand of death. He reconnoiters the house on the north of Van Nest's, Van Nest's house, and Brook's house on the south, and finally de-

cides upon the middle one as the place of assault. It does not affect his purpose that he meets Mr. Cox and Mr. Patten, under a broad bright moonlight. He waits his opportunity, until Williamson, the visitor, has departed, and Van Arsdale, the laboring man, has retired to rest. With an energy and boldness that no sane man, with such a purpose, could possess, he mortally stabs four persons, and dangerously wounds a fifth, in the incredibly short space of five minutes. Disabled, and therefore desisting from further destruction, he enters the stable, takes the first horse he finds, mounts him without a saddle, and guiding him by a halter, dashes toward the town. He overtakes and passes Williamson, the visitor, within the distance of three-fourths of a mile from the house which he had left in supposed security. Pressing on, the jaded beast, worn out with age, stumbles and brings him to the ground. He plunges his knife into the breast of the horse, abandons him, scours forward through the town, across the bridge and on the middle road to Burrington's; there seizes another horse, mounts him, and presses forward, until he arrives among his relations, the Depuys, at Schrœppel, thirty miles distant. They, suspecting him to have stolen the horse, refuse to entertain him. He proceeds to the adjoining village, rests from his flight, offers the horse for sale, and when his title to the horse is questioned, announces his true name and residence, and refers to the Depuys, who had just cast him off, for proof of his good character and conduct. When arrested and charged with the murder, he denies the act.

Now the sixth test given by Ray is, that "while most maniacs having gratified their propensity to kill, voluntarily confess the act, and quietly give themselves up to the proper authorities, a very few only, and those to an intelligent observer, show the strongest indications of insanity, fly, and persist in denying the act."

VII. "Murder is never criminally committed without some *motive* adequate to the purpose in the mind that is actuated by it, while the insane man commits the crime without any motive whatever, strictly deserving the name."

VIII. "The *criminal* never sheds more blood than is necessary for the attainment of his object. The *monomaniac* often sacrifices all within his reach to the cravings of his murderous propensity."

IX. The *criminal* either denies or confesses his guilt; if the

latter, he sues for mercy, or glories in his crimes. On the contrary, the *maniac*, after gratifying his bloody desires, testifies neither remorse, repentance, nor satisfaction."

X. "The *criminal* has accomplices, the *maniac* has none."

XI. "The murderer never conceives a design to murder without projecting a plan for concealing his victim, effecting his escape, and baffling pursuit. The maniac prepares the means of committing the crime with calmness and deliberation, but never dreams of the necessity of concealing it when done, or of escape, until his victim lies at his feet."

Dr. Bigelow and others state that the prisoner told them, as obviously was the case, that he sought no plunder, that he thought not of escape or flight, until his *things* were broken, and his hand was cut, so that he could not continue his work. He seized the nearest and the most worthless horse in the stable, leaving two fleet animals remaining in their stalls. He thought only of taking Burrington's horse, when the first failed; all he cared for was to get out of the county, there to rest, until his hand was cured, so that he could come back and do more *work*. He rested from flight within thirty miles from the scene of his crimes, and in selling his horse, was depriving himself of the only means of making his escape successful. When the person of Van Nest was examined, his watch, pocket-book, money, and trinkets, were found all undisturbed. Not an article in the house had been removed, and when the prisoner was searched upon his arrest, there was found in his pockets nothing but one copper coin, the one hundredth part of a dollar.

Without further detail, the parallel between the prisoner and the tests of madness established by medical jurisprudence, is complete.

It remains, gentlemen, to conclude the demonstration of the prisoner's insanity, by referring to the testimony of the witnesses who have given their opinions on that question. Cornelius Van Arsdale and Helen Holmes, the survivors of the dreadful scene at Van Nest's house, did not think the prisoner insane. The latter had only seen him for a moment, during the previous week, when he called there and asked for work. The former had never seen him before that fatal night. Both saw him there, only for a moment, and under circumstances exhibiting him as a ruthless murderer.

Williamson thinks he was not insane, but he saw the prisoner only when he swept past him, fleeing from his crime.

James Amos, Alonzo Taylor, George Burrington, and George B. Parker, say they read no indications of insanity in his conduct when arrested; but neither of them ever saw him before, or has seen him since.

Robert Simpson, the turner, George W. Hyatt and Joseph Morris, the blacksmiths, did not suspect him to be insane, when he purchased and sharpened his knives. Neither of them ever knew him before, or has known him since.

Nathaniel Lynch, though he furnishes abundant evidence of the prisoner's insanity, is himself unconvinced.

Aaron Demun, a colored man, does not think him insane, but stands alone, of all who knew him in his youth.

Israel G. Wood and Stephen S. Austin do not think him insane. They were his jailers six years ago, but they have not examined him since his arrest.

Vanderheyden and Monroe think him sane, but each testifies under feelings which disqualify him for impartiality.

Jonas Brown thinks him not insane, but never saw him, except when he was buying a pound of soap at his store.

John P. Hulbert, and Benjamin F. Hall, had brief conversations with him in the jail, after his arrest, but made no examination concerning his delusion.

Lewis Markham and Daniel Andrus think him not insane, but they have made no examination of the subject; while both give evidence that he was once as bright, active, and cheerful, as he is now stupid, senseless, and imbecile.

Benj. Vankeuren, Aretas A. Sabin, Silas E. Baker, and James E. Tyler, all keepers in the State Prison, and Alonzo Wood, the Chaplain, did not suspect him of insanity in the State Prison.

Their conduct towards him while there, proves their sincerity; but his history under their treatment will enable you to correct their erroneous judgments. It was their business, not to detect and cure insanity, but to prescribe his daily task, and to compel him by stripes to perform it in silence.

Michael S. Meyers, the former District Attorney, who prosecuted the prisoner for stealing the horse, looks at him now, and can see no change in his personal appearance; but he has never thought the subject worthy of an examination, and has not in six years spoken with, or thought of the accused.

Lyman Paine, and James H. Bostwick, to whom he applied for process, continue now as well convinced of the prisoner's sanity, as they were when he applied to them for warrants, which it was absurd for him to ask. Neither of them has examined him since his arrest, or stopped to compare his conduct in the murder with his application for a warrant, or with the strange delusion which brought him before them.

Such and so feeble is the testimony as to the prisoner's sanity, given by others than the medical witnesses. Nor is the testimony of the medical witnesses on the part of the people entitled to more respect.

Dr. Gilmore pronounces a confident opinion that the prisoner is sane; but the witness is without experience, or any considerable learning on that subject, and his opinion is grounded upon the fact, that the accused had intellect enough to prepare for his crime, and sense enough to make his escape, in the manner so often described. I read to the Doctor the accounts of several cases in Bedlam, and without exception he pronounced the madmen, sane criminals.

Dr. Hyde visited the prisoner twice in his cell, perhaps thirty minutes each time, and as the result of those visits, says he was rather of the opinion that he was sane. Dr. Hyde expressly disavows any learning or experience on the subject of insanity, and does not give the details of his examination.

Dr. David Dimon visited the prisoner several times in jail, but could not discover anything that he could call insanity. He thinks there can be no insane delusion in this case, because he thinks that an insane delusion is the thorough conviction of the reality of a thing, which is opposed by the evidence of the sufferer's senses. The Doctor claims neither study nor experience; pronounces the prisoner to be of a grade of intellect rather small for a negro; thinks he has not as much intellect as a child of fourteen years of age, and in regard to knowledge, would compare him with a child two or three years old, who knows his A, B, C, but cannot count twenty-eight.

Those who seek the extreme vengeance of the law, will, if successful, need all the consolation to be derived from the sanity of the accused, if, at the age of twenty-three, he be thus imbecile in mind and barren in knowledge.

Dr. Jedediah Darrow has read nothing on the subject of insanity for forty years, and has never had any experience. He declares that his conclusion is not to be regarded as a *professional* opinion. He talked with the prisoner *once* in jail, to ascertain his sanity and thought it important *to avoid all allusion to the crimes he had committed, their motives, causes, and circumstances.* He *now* thinks that it would have been wise, where monomania was suspected, to have examined into the alleged *delusion.* He contents himself with saying, he did not *discover insanity.*

Dr. Joseph L. Clary visited the prisoner in jail: cannot give a decided opinion; his *prevailing* impression is, that the prisoner is not insane, but he has not had opportunities enough to form a correct opinion. He has never seen a case of Dementia, and knows it only from definitions in books, which he has never tested.

Dr. Bigelow, Physician to the prison, discovered nothing in his examinations which led him to suspect insanity. The Doctor has a salary of five hundred dollars per annum; his chief labor in regard to insanity is to detect counterfeits in the prison; and although he admits that the prisoner has answered him freely, and unsuspectingly, and fully, he accounts for the condition of his mind, by saying that he regards him "*as an ignorant, dull, stupid, degraded, debased, and morose, but not insane person.*"

Dr. Sylvester Willard, without particular experience or learning in this branch, concurs in these opinions.

Dr. Thomas C. Spencer, Professor in the Medical College at Geneva, brings up the rear of the People's witnesses. I complain of his testimony, that it was covered by a masked battery. The District Attorney opened the cause with denunciations of scientific men, said that too much learning made men mad, and warned you therefore against the educated men who might testify for the prisoner. I thought at the time that these were extraordinary opinions. I had read

> A little learning is a dangerous thing,
> Drink deep or taste not the Pierian Spring:
> Those shallow drafts intoxicate the brain,
> But drinking largely sobers us again."

What was my surprise to find that all these denunciations against learning and experience, made by the counsel for the people, were only a cover for Dr. Spencer.

He heralds himself as accustomed to teach, and informs us that he has visited the principal hospitals for the insane in London, Paris, and other European capitals. How unfortunate it was that

on his cross-examination, he could not give the name or location of any asylum in either of those cities! Even the names and locations of the "Charenton" and "Bicetre" had escaped his memory.

But it is no matter. The doctor overwhelms us with learning, universal and incomprehensible. Here is his own map* of the mental faculties, in which twenty-eight separate powers of mind are described in odd and even numbers.

The arrows show the course of ideas through the mind. They begin with the motives in the region of the highest odd numbers in the southwest corner of the mind, marked A., and go perpendicularly northward, through Thirst and Hunger to Sensation, marked B.; then turn to the right, and go eastward, through Conception, to Attention, marked C., and then descend southward, through Perception, Memory, Understanding, Comparison, Combination, Reason, Invention, and Judgment, wheel to the left under the Will, marked D., and pass through Conscience, and then to V., the unascertained centre of Sensation, Volition, and Will. This is the natural turnpike road for the ideas when we are awake and sane. But here is an open shun-pike X. Y. Z., on which Ideas, when we are asleep or insane, start off and pass by Conscience, and so avoid paying toll to that inflexible gate-keeper. Now all this is very well, but I called on the doctor to show how the fugitive idea reached the will at D., after going to the end of the shun-pike. It appeared there was no other way but to dart back again, over the shun-pike, or else to go cringing, at last, through the iron gate of Conscience.

Then there was another difficulty. The doctor forgot the most important point on his own map, and could not tell from memory where he had *located "the unascertained centre."*

The doctor pronounces the prisoner sane because he has the chief intellectual faculties, Sensation, Conception, Attention, Imagination, and Association. Now, here is a delicate piece of wooden cutlery, fabricated by an inmate of the lunatic asylum at Utica, who was acquitted of murder on the ground of insanity. He who fabricated it evinced in the manufacture, Conception, Perception, Memory, Comparison, Attention, Adaptation, Co-ordination, Kindness, Gratitude, Mechanical Skill, Invention, and Pride. It is well for him that Dr. Spencer did not testify on his trial.

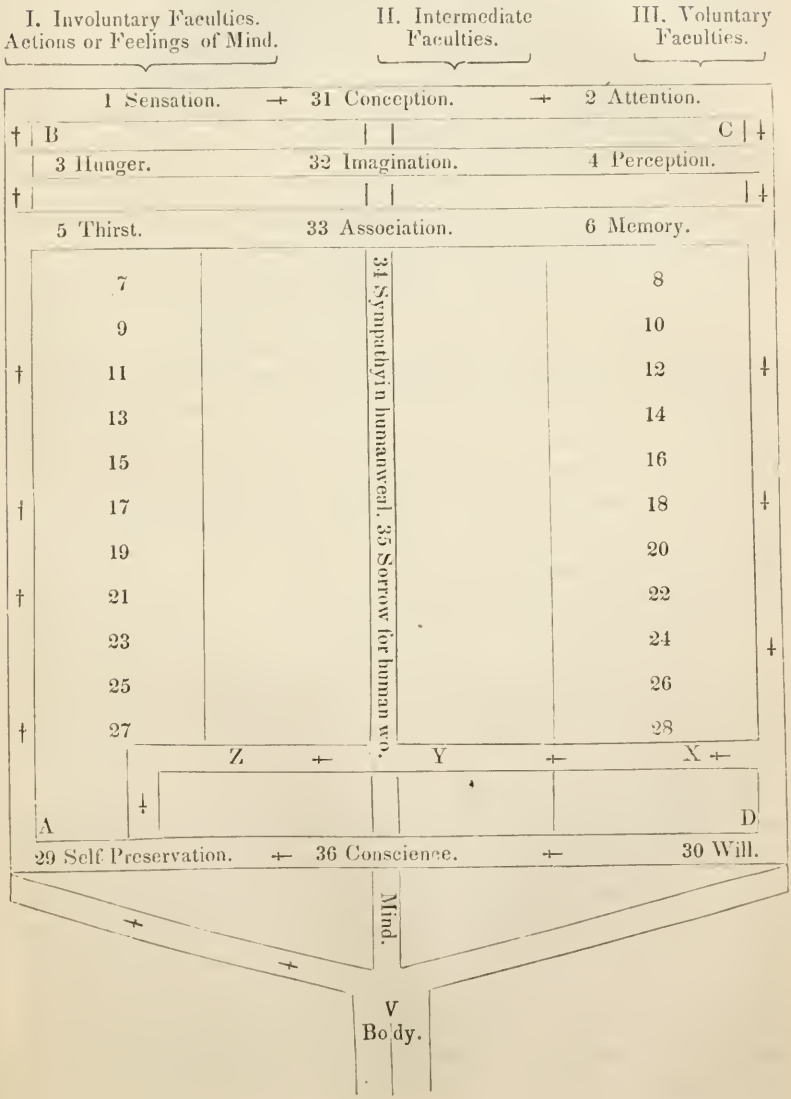
* See next page.

SPENCER'S INTELLECTUAL CHART.

THE BRAIN, LITTLE BRAIN, SPINAL MARROW AND NERVES,

Are the Instruments or Media connecting the Mind with Material Things, and are the seat of Disease in Insanity.

THREE CLASSES—THIRTY-SIX FACULTIES.



EXPLANATIONS OF THE FOREGOING CHART

7 Love of society.
9 " children.
11 " money.
13 " combat.
15 " fame.
17 " Nature's laws.
19 " Divine things.
21 Revenge,
23 Anger,
25 Joy, Hope,
27 Fear,
} And other passions, propensities and motives.
V. Unascertained centre of Thought, Sensation, and Volition.
X. Y. Z. Dreaming or insane road of Thought around Conscience and Will.

8 Understanding.
10 Comparison.
12 Combination.
14 Reason.
16 Invention.
18 Judgment.
20 Sense of justice.
22 Pleasure in right.
24 Horror of wrong acts.
26 Intention, Co-ordination.
28 Other volitions, mental and moral.
V. A. B. C. D. Union of all the Mental Faculties, as if by electric wires, as one whole.

Opposed to these vague and unsatisfactory opinions is the evidence of Sally Freeman, the prisoner's mother, who knew him better than any other one; of John Depuy, his brother-in-law and intimate friend; of Ethan A. Warden, his employer in early youth; of Deborah Depuy, his associate in happier days; of Adam Gray, who knew him in childhood, and sheltered him on his discharge from the state prison; of Ira Curtis, in whose family he resided seven years ago; of David Winner, the friend of his parents; of Robert Freeman, his ancient fellow-servant at the American Hotel; of John R. Hopkins, an intelligent and practical man, who examined him in the jail; of Theron R. Green, who discovered his insanity in the state prison; of the Rev. John M. Austin, the one good Samaritan who deemed it a pastoral duty to visit even a supposed murderer in prison; of William P. Smith, who has corrected now the error of his judgment while in the state prison; of Philo H. Perry, a candid and enlightened observer, and of Warren T. Worden, Esq., a lawyer of great shrewdness and sagacity.

Then there is an overwhelming preponderance of medical testimony. The witnesses are, Dr. Van Epps, who has followed the accused from his cradle to the present hour, with the interest of a humane and sincere friend; Dr. Fosgate, who attended him in the jail for the cure of his disabled limb; Dr. Briggs, equal in public honors to Dr. Bigelow, and greatly his superior in candor as well as learning, and who compares the prisoner now with what he was in better days; Dr. McNaughton, of Albany, and Dr. Hun, of the same place, gentlemen known throughout the whole country for eminence in their profession; Dr. McCall, of Utica, President of

the Medical Society of the State of New York; Dr. Coventry, Professor of Medical Jurisprudence in Geneva College, and one of the managers of the State Lunatic Asylum at Utica; and Dr. Brigham, the experienced and distinguished Superintendent of that institution. This last gentleman, after reviewing the whole case, declares that he has no doubt that the prisoner is now insane, and was so when his crimes were committed; that he should have received him as a patient then, on the evidence given here, independently of the crime, and should now receive him upon all the evidence which has been submitted to you.

Dr. Brigham pronounces the prisoner to have been a *monomaniac* laboring under the overwhelming progress of the delusion I have described, which had its paroxysm in the murders of which he is accused; and declares that since that time he has sunk into a deep and incurable *dementia*, the counter-part of idiocy. In these opinions, and in the reasons for them so luminously assigned by him, all the other medical gentlemen concur.

You may be told, gentlemen, that Dr. Hun and Dr. McNaughton testified from mere observation of the prisoner without personal examination. Yes! I will thank the Attorney General for saying so. It will recall the strangest passages of all, in this the the strangest of all trials. This is a trial for murder. A verdict of guilty will draw after it a sentence of death. The only defence is insanity. Insanity is to be tested by examining the prisoner as he *now* is, and comparing him with what he *was* when the crime was committed, and during all the intervening period, and through all his previous life. Dr. Hun and Dr. McNaughton were served with subpœnas, requiring them to attend here. They came, proceeded to the jail, and examined the prisoner on Wednesday night during the trial. Early on Thursday morning, they proceeded again to the jail to resume their examination, and were then denied access. It is proved that the attorney general instructed the sheriff to close the doors against them, and the attorney general admits it. Dr. Hun and Dr. McNaughton are called to testify, and are ready to testify that the examination they did make satisfied them that the prisoner is insane now, and that he was insane when he committed the homicide. The attorney general objects, and the court overrules the evidence, and decides that these eminent physicians shall testify only from mere external observation of the prisoner, in court, and shall expressly forget and lay aside

their examinations of the prisoner made in jail, by conversations with him. Nor was the process by which the court effected this exclusion less remarkable than the decision itself. The court had obtained a verdict on the sixth of July, on the preliminary issue, that the prisoner was sufficiently sane to distinguish right from wrong. That verdict has been neither *pleaded* nor *proved* on this trial, and if it had been, it would have been of no legal value. Yet the court founds upon it a judicial statute of limitations, and denies us all opportunity to prove the prisoner insane, after the sixth of July. I tremble for the jury that is to respond to the popular clamor under such restraints as these. I pray God that these judges may never experience the consequences which must follow such an adjudication. But, gentlemen, Dr. Hun and Dr. McNaughton bear, nevertheless, the strongest testimony that the prisoner is an *idiot*, as appears by observation, and that the evidence, as submitted to them, confirms this conviction.

There is proof, gentlemen, stronger than all this. It is silent, yet speaking. It is that *idiotic* smile which plays continually on the face of the maniac. It took its seat there while he was in the State Prison. In his solitary cell, under the pressure of his severe tasks and trials in the work-shop, and during the solemnities of public worship in the chapel, it appealed, although in vain, to his task-masters and his teachers. It is a smile, never rising into laughter, without motive or cause—the smile of vacuity. His mother saw it when he came out of prison, and it broke her heart. John Depuy saw it and knew his brother was demented. Deborah Depuy observed it and knew him for a fool. David Winner read in it the ruin of his friend, Sally's son. It has never forsaken him in his later trials. He laughed in the face of Parker, while on confession at Baldwinsville. He laughed involuntarily in the faces of Warden and Curtis, and Worden and Austin, and Bigelow and Smith, and Brigham and Spencer. He laughs perpetually here. Even when Van Arsdale showed the scarred traces of the assassin's knife, and when Helen Holmes related the dreadful story of the murder of her patrons and friends, he laughed. He laughs while I am pleading his griefs. He laughs when the Attorney General's bolts would seem to rive his heart. He will laugh when you declare him guilty. When the Judge shall proceed to the last fatal ceremony, and demand what he has to say why the sentence of the law should not be pronounced upon him, although

there should not be an unmoistened eye in this vast assembly, and the stern voice addressing him should tremble with emotion, he will even then look up in the face of the court and laugh, from the irresistible emotions of a shattered mind, delighted and lost in the confused memory of absurd and ridiculous associations. Follow him to the scaffold. The executioner cannot disturb the calmness of the idiot. He will laugh in the agony of death. Do you not know the significance of this strange and unnatural risibility? It is a proof that God does not forsake even the poor wretch whom we pity or despise. There are in every human memory, a well of joys and a fountain of sorrows. Disease opens wide the one, and seals up the other, forever.

You have been told, gentlemen, that this smile is hereditary and accustomed. Do you think that ever ancestor or parent of the prisoner, or even the poor idiot himself, was in such straits as these? How then can you think that this smile was ever before recognized by these willing witnesses? That chaotic smile is the external derangement which signifies that the strings of the harp are disordered and broken, the superficial mark which God has set upon the tabernacle, to signify that its immortal tenant is disturbed by a divine and mysterious visitation. If you cannot see it, take heed that the obstruction of your vision be not produced by the mote in your own eye, which you are commanded to remove before you consider the beam in your brother's eye. If you are bent on rejecting the testimony of those who know, by experience and by science, the deep affliction of the prisoner, beware how you misinterpret the hand-writing of the Almighty.

I have waited until now, gentlemen, to notice some animadversions of the counsel for the people. They say that drunkenness will explain the conduct of the prisoner. It is true that John Depuy discovered that those who retailed poisonous liquors were furnishing the prisoner with this, the worst of food for his madness. But the most laborious investigation has resulted in showing, by the testimony of Adam Gray, that he once saw the prisoner intoxicated, and that he, with some other person, drank spirits in not immoderate quantity, on the day when Van Nest was slain. There is no other evidence that the prisoner was ever intoxicated. John Depuy and Adam Gray testify that except that one time he was always sober. David Winner proves he was sober all the time the witness lived at Willard's, and Mary Ann Newark says

he was entirely sober when he sallied forth on his fatal enterprise. The only value of the fact of his drunkenness, if it existed, would be to account for his disturbed nights at Depuy's, at Gray's, and at Willard's. It is clearly proved that his mind was not beclouded, nor his frame excited, by any such cause on any of those occasions; and Dr. Brigham truly tells you that while the maniac goes quietly to his bed, and is driven from it by the dreams of a disturbed imagination, the drunkard completes his revels and his orgies before he sinks to rest, and then lies stupid and besotted until nature restores his wasted energies with return of day.

Several of the prisoner's witnesses have fallen under the displeasure of the counsel for the people. John Depuy was asked on the trial of the preliminary issue, whether he had not said, when the prisoner was arrested, that he was no more crazy than himself. He answered, that he had not said "in those words," and asked leave to explain by stating what he had said. The court denied him the right and obliged him to answer yes or no, and of course he answered no. On this trial he makes the explanation, that after the murder of Van Nest, being informed that the prisoner had threatened his life, he said, "Bill would do well enough if they wouldn't give him liquor; he was bad enough at any time, and liquor made him worse." By a forced construction, this declaration, which substantially agrees with what he is proved by other witnesses to have said, is brought in conflict with his narrow denial, made on the former trial. It has been intimated on this trial, that the counsel for the prosecution would contend that John Depuy was an accomplice of the prisoner and the instigator of his crimes. This cruel and unfeeling charge has no ground, even in imagination, except that twelve years ago Depuy labored for six weeks on the farm of the late Mr. Van Nest, then belonging to his father-in-law, Peter Wyckoff, that a misunderstanding arose between them, which they adjusted by arbitration and that they were friends always afterward. The elder Mr. Wyckoff died six years go. It does not appear that the late Mr. Van Nest was even married at that time. John Depuy is a colored man, of vigorous frame and strong mind, with good education. His testimony, conclusive in this cause, was intelligently given. He claims your respect as a representative of his people, rising to that equality to which it is the tendency of our institutions to bring them.

I have heard the greatest of American orators. I have heard

Daniel O'Connell and Sir Robert Peel, but I heard John Depuy make a speech excelling them all in eloquence: "They have made William Freeman what he is, a brute beast; they don't make any thing else of any of our people but brute beasts; but when we violate their laws, then they want to punish us as if we were men." I hope the Attorney General may press his charge: I like to see persecution carried to such a length; for the strongest bow, when bent too far, will break.

Deborah Depuy is also assailed as unworthy of credit. She calls herself the wife of Hiram Depuy, with whom she has lived ostensibly in that relation for seven years, in, I believe, unquestioned fidelity to him and her children. But it appears that she has not been married with the proper legal solemnities. If she were a white woman, I should regard her testimony with caution, but the securities of marriage are denied to the African race over more than half of this country. It is within our own memory that the master's cupidity could divorce husband and wife within this state, and sell their children into perpetual bondage. Since the Act of Emancipation here, what has been done by the white man to lift up the race from the debasement into which he had plunged it? Let us impart to negroes the knowledge and spirit of Christianity, and share with them the privileges, dignity and hopes of citizens and Christians, before we expect of them purity and relf-respect.

But, gentlemen, even in a slave state, the testimony of this witness would receive credit in such a cause, for negroes may be witnesses there, for and against persons of their *own* caste. It is only when the life, liberty or property of the white man is invaded, that the negro is disqualified. Let us not be too severe. There was once upon the earth a Divine Teacher who shall come again to judge the world in righteousness. They brought to him a woman taken in adultery, and said to him that the law of Moses directed that such should be stoned to death, and he answered: "Let him that is without sin cast the first stone."

The testimony of Sally Freeman, the mother of the prisoner, is questioned. She utters the voice of nature. She is the guardian whom God assigned to study, to watch, to learn, to know what the prisoner was, and is, and to cherish the memory of it for ever. She could not forget it if she would. There is not a blemish on the person of any one of us, born with us or coming from disease

or accident, nor have we committed a right or wrong action, that has not been treasured up in the memory of a mother. Juror! roll up the sleeve from your manly arm and you will find a scar there of which you know nothing. Your mother will give you the detail of every day's progress of the preventive disease.—Sally Freeman has the mingled blood of the African and Indian races. She is nevertheless a woman, and a mother, and nature bears witness in every climate and in every country, to the singleness and uniformity of those characters. I have known and proved them in the hovel of the slave, and in the wigwam of the Chippewa. But Sally Freeman has been intemperate. The white man enslaved her ancestors of the one race, exiled and destroyed those of the other, and debased them all by corrupting their natural and healthful appetites. She comes honestly by her only vice. Yet when she comes here to testify for a life that is dearer to her than her own, to say she knows her own son, the white man says she is a drunkard! May Heaven forgive the white man for adding this last, this cruel injury to the wrongs of such a mother! Fortunately, gentlemen, her character and conduct are before you. No woman ever appeared with more sobriety, decency, modesty, and propriety, than she has exhibited here. No witness has dared to say or think that Sally Freeman is not a woman of truth. Dr. Clary, a witness for the prosecution, who knows her well, says, that with all her infirmities of temper and of habit, Sally "was always a truthful woman." The Roman Cornelia could not have claimed more. Let then the stricken mother testify for her son.

> "I ask not, I care not, if guilt's in that heart,
> I know that I love thee, whatever thou art."

The learned gentlemen who conduct this prosecution have attempted to show that the prisoner attended the trial of Henry Wyatt, whom I defended against an indictment for murder, in this Court, in February last; that he listened to me on that occasion, in regard to the impunity of crime, and that he went out a ripe and complete scholar. So far as these reflections affect me alone, they are unworthy of an answer. I pleaded for Wyatt then, as it was my right and my duty to do. Let the Counsel for the people prove the words I spake, before they charge me with Freeman's crimes. I am not unwilling those words should be recalled. I am not unwilling that any words I ever spoke in any responsible relation should be remembered. Since they will not recall those

words, I will do so for them. They were words like those I speak now, demanding cautious and impartial justice; words appealing to the reason, to the consciences, to the humanity of my fellow men; words calculated to make mankind know and love each other better, and adopt the benign principles of Christianity, instead of the long cherished maxim of retaliation and revenge. The creed of Mahomet was promulgated at a time when paper was of inestimable value, and the Koran teaches that every scrap of paper which the believer has saved during his life, will gather itself under his feet, to protect them from the burning iron which he must pass over, while entering into Paradise. Regardless as I have been of the unkind construction of my words and actions by my cotemporaries, I can say in all humility of spirit, that they are freely left to the ultimate, impartial consideration of mankind. But, gentlemen, how gross is the credulity implied by this charge! This stupid idiot, who cannot take into his ears, deaf as death, the words which I am speaking to you, though I stand within three feet of him, and who even now is exchanging smiles with his and my accusers, regardless of the deep anxiety depicted in your countenances, was standing at yonder post, sixty feet distant from me, when he was here, if he was here at all, on the trial of Henry Wyatt. The voice of the District Attorney reverberates through this dome, while mine is lost almost within the circle of the bar. It does not appear that it was not that voice that beguiled the maniac, instead of mine; and certain it is that, since the prisoner does not comprehend the object of his attendance here now, he could not have understood anything that occurred on the trial of Wyatt.

Gentlemen, my responsibilities in this cause are discharged. In the earnestness and seriousness with which I have pleaded, you will find the reason for the firmness with which I have resisted the popular passions around me. I am in some degree responsible, like every other citizen, for the conduct of the community in which I live. They may not inflict on a maniac the punishment of a malefactor without involving me in blame, if I do not remonstrate. I cannot afford to be in error, abroad, and in future times. If I were capable of a sentiment so cruel and so base, I ought to hope for the conviction of the accused; for then the vindictive passions, now so highly excited, would subside, the consciences of the wise and the humane would be awakened, and in a few months the

invectives which have so long pursued me would be hurled against the jury and the court.

You have now the fate of this lunatic in your hands. To him as to me, so far as we can judge, it is comparatively indifferent what be the issue. The wisest of modern men has left us a saying, that "the hour of death is more fortunate than the hour of birth," a saying which he signalized by bestowing a gratuity twice as great upon the place where he died as upon the hamlet where he was born. For aught that we can judge, the prisoner is unconscious of danger and would be insensible to suffering, let it come when and in whatever forms it might. A verdict can only hasten, by a few months or years, the time when his bruised, diseased, wandering and benighted spirit shall return to Him who sent it forth on its sad and dreary pilgrimage.

The circumstances under which this trial closes are peculiar. I have seen capital cases where the parents, brothers, sisters, friends of the accused surrounded him, eagerly hanging upon the lips of his advocate, and watching, in the countenances of the court and jury, every smile and frown which might seem to indicate his fate. But there is no such scene here. The prisoner, though in the greenness of youth, is withered, decayed, senseless, almost lifeless. He has no father here. The descendant of slaves, that father died a victim to the vices of a superior race. There is no mother here, for her child is stained and polluted with the blood of mothers and of a sleeping infant; and he "looks and laughs so that she cannot bear to look upon him." There is no brother, nor sister, nor friend here. Popular rage against the accused has driven them hence, and scattered his kindred and people. On the other side, I notice the aged and venerable parents of Van Nest and his surviving children, and all around are mourning and sympathizing friends. I know not at whose instance they have come. I dare not say they ought not to be here. But I must say to you that we live in a christian and not in a savage state, and that the affliction which has fallen upon these mourners and us, was sent to teach them and us mercy and not retaliation; that, although we may send this maniac to the scaffold, it will not recall to life the manly form of Van Nest, nor re-animate the exhausted frame of that aged matron, nor restore to life and grace, and beauty, the murdered mother, nor call back the infant boy from the arms of his Savior. Such a verdict can do no good to the living, and carry no joy to the

dead. If your judgment shall be swayed at all by sympathies so wrong, although so natural, you will find the saddest hour of your life to be that in which you will look down upon the grave of your victim, and "mourn with compunctious sorrow" that you should have done so great injustice to the "poor handful of earth that will lie mouldering before you."

I have been long and tedious. I remember that it is the harvest moon, and that every hour is precious while you are detained from your yellow fields. But if you shall have bestowed patient attention throughout this deeply interesting investigation, and shall in the end have discharged your duties in the fear of God and in the love of truth justly and independently, you will have laid up a store of blessed recollections for all your future days, imperishable and inexhaustible.

Note.—As has been already stated, a verdict of guilty was rendered, and the prisoner was sentenced to be hanged. But Mr. Seward's efforts to prevent the execution of a demented maniac did not end here. He appealed to the governor for a pardon, with what success the following correspondence will show:

Auburn, August 17th, 1846.

Dear Sir,—William Freeman, a negro, lies in the jail of this county under sentence of death for the crime of murder. I acted as his counsel on the solicitation of humane persons who believed him insane. I believe him absolutely and hopelessly insane, sinking from monomania into dementia. I believe he was a lunatic, and committed his crimes under the influence of an insane delusion. Thus believing, it seems to be a duty to appeal to you for pardon to the convict. The grounds of my opinion are the same which were submitted to the jury and overlooked by them. I beg leave, therefore, to transmit herewith a copy of my argument on the trial. You will, of course, know what allowance should be made for my prejudices and my zeal as counsel, and will know how much confidence ought to be reposed in the verdict of the jury. My own duty is finished when I express to you my sincere conviction of the truth of the plea which I unsuccessfully maintained. Fully believing that the subject will engage your most dispassionate consideration, I have the honor to be Your Excellency's most obedient servant,

WILLIAM H. SEWARD.

His Excellency Silas Wright, *Governor, &c.*

Executive Chamber.
Albany, 7th September, 1846.

Dear Sir,—On my return to the city on the 22d ult., I found your letter of the 17th, relating to the case of William Freeman, and the copy of your printed argument which accompanied the letter. A large share of my time, since my return, has been devoted to the examination of the reports from the judge, and the other papers connected with the case, and I have come to the conclusion, that there is nothing in the testimony to warrant me in overruling the verdicts of the two juries, finding the fact of sanity. The case is a painful one in every aspect of it, and yet it would have been pleasant to my feelings to have found it in my power, consistently with my sense of duty, to have saved this man from the awful fate impending over him. I read your argument with attention and deep interest, but I did not find in it matter to obviate the force of the testimony upon the other side and the verdicts of the two juries. I am very respectfully, &c.,

SILAS WRIGHT.

His Excellency William H. Seward, *&c. &c.*

Mr. Seward's next appeal was to the Supreme Court for a new trial, which was granted. The death of Freeman, however, relieved him of further labor in the case.—Ed.

FUGITIVE SLAVES.*

May it please the Court,

The defendant moved in the Circuit Court for a *new trial* on the ground of Erroneous Instructions given by the court to the jury.

The defendant moved also *an arrest of judgment* on the ground of the Insufficiency of the Declaration.

On hearing these motions, the judges of the Circuit Court required instructions from this august tribunal, upon eight questions which arose on the former motion, to wit:

First. Whether under the fourth section of the act of February 12, 1793, the notice must be in writing, given by the claimant or his agent; must contain a statement that the person harbored or concealed is a fugitive from labor, within the meaning of the third section of the statute, and must be served on the person who harbors or conceals the alleged fugitive.

Second. Whether such notice, if it be not in writing, and it be not served in the manner before mentioned, must be given verbally, by the claimant or his agent, to the person who harbors or conceals the alleged fugitive, or whether a general notice in a newspaper to the public is necessary.

Third. Whether clear proof, by the confessions of the defendant or otherwise, that he knew the colored person harbored or concealed was a slave, and was a fugitive from labor, is not sufficient to charge the defendant with notice; although he may have obtained such knowledge from the slave, or in any other manner.

Fourth. Whether the facts that the defendant received, from another person, the fugitive from labor at three o'clock in the morning, in the State of Ohio, twelve miles from the place in Kentucky where he was held to labor, and transported him in a closely covered wagon, twelve or fourteen miles, so that he escaped from pursuit and his services were thereby lost to his master, do not constitute an act of "harboring," or of "concealing" the fugitive within the meaning of the statute.

* This action was brought in the Circuit Court of the United States, for the district of Ohio, by Wharton Jones, of Kentucky, against John Van Zandt, of Ohio, to recover a penalty of five hundred dollars, for harboring, and concealing, Andrew, the plaintiff's slave, in violation of the act of Congress, 1793. The jury, under the charge of the court, rendered a verdict for the plaintiff. The defendant moved for a new trial, and an arrest of judgment. The cause came into the Supreme Court of the United States in December, 1847, on a certificate that the judges of the Circuit Court were divided in their opinions upon the questions stated in the argument. Counsel for the plaintiff, James T. Morehead, of Kentucky. Counsel for the defendant, William H. Seward, of New York, and S. P. Chase, of Ohio.

Fifth. Whether such transportation, with the circumstances thus mentioned, is not "harboring" or "concealing" within the meaning of the statute, although the fugitive should be recaptured by his master.

Sixth. Whether such transportation, in an open wagon, whereby the services of the fugitive are entirely lost by his master, is not harboring the slave within the statute.

Seventh. Whether a claim of the fugitive upon the person who harbors or conceals him, must precede or accompany the notice.

Eighth. Whether any overt act of a character so marked as to show an intention to elude the vigilance of the master, or his agent, and calculated to effect that object, is harboring the fugitive within the statute.

The judges of the Circuit Court require also instructions upon six questions which arose upon the *motion in arrest of judgment.*

First. Whether the first and second counts in the declaration contain sufficient averments that Andrew, the colored man, escaped from the State of Kentucky into the State of Ohio.

Second. Whether said counts contain a sufficient averment of notice, that Andrew was a fugitive from labor.

Third. Whether the averments in those counts, that the defendant harbored Andrew, are sufficient.

Fourth. Whether those counts are otherwise sufficient.

Fifth. Whether the act of February 12th, 1793, is repugnant to the Constitution of the United States.

Sixth. Whether that act is repugnant to the ordinance of Congress of July, 1787, entitled, "An Ordinance for the government of the territory of the United States, northwest of the Ohio."

I humbly beg leave to submit my views upon these questions, under four propositions:

FIRST. The declaration is insufficient.

SECOND. The evidence was improper and insufficient.

THIRD. The act of 1793, so far as the present subject is involved, is void, because it violates the ordinance of 1787.

FOURTH. The act of 1793 conflicts with the Constitution of the United States, and is therefore void.

Thus my argument, which begins in the mazes of special pleading, will conduct us through a portion of the interesting field of the law of evidence, and bring us, at last, into the wide domain of constitutional law. If I should fail by the way, I hope it may be remembered, for my excuse, that an imperative duty commanded me to undertake so long and difficult a journey.

FIRST.—The Declaration is insufficient.

Because, *first*, neither count sufficiently charges the defendant with notice that Andrew was a fugitive from labor.

Secondly. It is not sufficiently averred that Andrew was held to labor or service to the plaintiff in Kentucky, by the laws thereof, and escaped and fled from that state into Ohio.

Thirdly. It is not sufficiently averred, that the defendant harbored or concealed the fugitive.

First. It is not charged, in either count, that the defendant had notice before the alleged harboring or concealment, that *Andrew* was a *fugitive from labor.*

The substance of the statute may be briefly stated as follows:

Section 3. "When a person held to labor in any state or territory, under the laws "thereof, shall escape into any other state or territory, the person to whom such labor is "due, or his agent, or attorney, may seize or arrest the fugitive."

Sec. 4. "If any person shall, knowingly and willingly, obstruct, or hinder, such "claimant, or his agent, or attorney, in thus seizing and arresting the fugitive, or shall "harbor or conceal such person, after notice that he or she is a fugitive from labor, "as aforesaid, he shall, for either of the said offences, forfeit and pay the sum of five "hundred dollars."

The offence pretended in the declaration is, what is created by the second clause of the 4th section, and consists in "harboring," or "concealing" a fugitive from labor, after notice received that the person thus protected has escaped from labor, to which he was held by a law of the state, from which he fled.

His Honor, the presiding Judge of the Circuit Court, [McLean,] held, that positive, direct, and formal notice was not necessary; and that *knowledge* possessed by the defendant, however obtained, was equivalent to such *notice*, or a substitute for it. Such a construction of the statute is obviously necessary to support this declaration. But this construction relieves this penal statute against liberty and humanity of a condition favorable to both, expressly and emphatically declared. A person shall not forfeit and pay five hundred dollars for merely harboring or concealing a fugitive. Such protection and hospitality shall not subject the offender to punishment, even though *knowingly and willingly* rendered. He may harbor the slave, and conceal him from his pursuers, as the law of nature commands, until after notice that the master forbids. The words after notice are strongly contrasted, in this clause of the section, with the previous words *knowingly and willingly*, in another part of the same section. The word *after* gives precision. It is not *with* knowledge, or even *with* notice, but *after* notice. And this form of expression raises the notice prescribed, up to the dignity of a condition precedent of the crime.

If notice be a condition precedent, then the notice must be *explicit, certain, direct and comprehensive.* Such notice is capable

of being averred. No such notice is averred; or, at least, none such is described.

The learned Judge held that, as a general principle, when the law speaks of *notice*, it does not contemplate a notice in *writing*, unless it be required by statute, by commercial usage, or by the practice of courts. He held also, as a general principle, that knowledge is *equivalent* to notice. But I humbly submit that these general principles, however true, are never applied in construing *penal statutes*. Legal conditions may be dispensed with for equivalents, to promote the ends of justice in civil controversies; but they cannot be waived when they are barriers, erected for the protection of the accused.

Wisdom and humanity are manifested in this condition precedent of notice, as contrasted with *mere knowledge*. For he who obstructs, or hinders a master in the act of recapture, does, what under the law of slavery, is a palpable private wrong, and commits a breach of the peace. But harboring and concealing a weary and fainting slave, though known as a slave, is not injurious, and does not disturb society. Under no law can this act be deemed immoral; and in most cases it would be charitable. It can only become an offence when persisted in *after* notice. The Constitution provides only for the surrender of fugitives when *claimed*, and the law, following the Constitution, forbids the freeman to harbor the slave, only after notice of a design, or purpose to reclaim. If there be no such effort or design, it is as lawful, and as humane to harbor the slave, as to entertain a fellow freeman. But the construction of the learned Judge makes the Congress of the United States interdict protection, hospitality, and charity to the slave, whom no master pursueth, and commands the citizen to shut out the wandering fugitive who may be perishing at his gate. This would be injurious to the master, as well as inhuman toward the slave. If he be left to die, his services will be lost; but if he be harbored and revived, he will be in a condition to be reclaimed.

Nor is the principle that mere knowledge, however acquired, is equivalent to direct notice at all as general, even in commercial law, as is supposed. In an action against the indorser, or drawer of a bill of exchange, if the plaintiff do not aver in the declaration a demand of payment at the proper time, on the drawee or acceptor, or omit to *allege due notice* to the defendant, of refusal of

payment by the party first liable, the omission is fatal. And what is required in those cases is *direct notice*.* The only reason for this is, that the *defendant* is not at all liable until AFTER NOTICE. The well-known case of Rushton *vs.* Aspinwall,† was an action against an indorser, and the declaration contained an averment of request of the acceptor, but no allegation of notice to the indorser. Lord Mansfield said, "the defendant is sued on a promise *inferred* by law, and the declaration does not contain the premises from which the inference can be drawn." This reasoning applies with precision to the present case.

Where it is necessary to charge a party, notice must be fully averred. Thus in Comyn's Digest Tit. Pleader 69, it is laid down as a rule, that not only must NOTICE be averred, but it must be averred with particular certainty of *time*, *place*, and *substance*.

This action is founded upon a statute. There is an inflexible rule, that in such a case the plaintiff must aver every fact essential to the offence, because unless the declaration be thus explicit, the court cannot determine, whether the prosecutor has a cause of action.‡ The defendant may innocently harbor a slave until *after* notice. Then notice is a condition. It is more; it is a *condition precedent*. Then the party harboring is entitled to notice. That notice must be given by him who seeks to subject the defendant to the penalty. Giving the notice, then, is a condition to be performed by the plaintiff, and by no one else. This action is founded on a contract created by law.

The statute builds the obligation upon two facts: First, that the defendant has received notice, that the person harbored is a fugitive from labor, held &c.; and secondly, that the defendant, *after* that notice, harbors the fugitive. But, "when the performance of an agreement depends on an act, to be done by the plaintiff, then his doing the act, is a condition precedent, and the court will not inquire, whether its performance would be beneficial to the defendant, or its neglect would be injurious. The act must be done."‖

Again, the case is exactly similar to one where a previous request is made a condition of liability. But the authorities teach us, that if there be a condition, that a person shall *do* upon *request*,

* Gould's Pleadings, Chapter IV. § 13, 14, 15, 16.

† Douglass, 683.

‡ Comyn's Digest, Pleader C. 76.

‖ Ibid.

then the averment of *request* must be certain, and express, and thus show full performance of the condition precedent.* Two forms of requests are recognized in pleading; *general* and *special* requests. A declaration on a contract always contains an averment, that the plaintiff *requested* the defendant to perform, even though the request was not a condition precedent. In such cases, the request averred is *general*, without particularity of time, place, or circumstances. The allegation is merely formal. It cannot be traversed by the defendant, nor need it be proved by the plaintiff. But a *special* request is one which is a condition of the defendant's liability. And in such cases, the special request must be averred with particularity. Issue may be taken on it, and it must be proved, as charged.† The notice prescribed in the act of 1793, is equivalent to a request. The law contemplates that the defendant may be found harboring a slave, as a mere act of hospitality, or of humanity, whereby his services may be lost to his master, authorizes the master to deprive the slave of his refuge by giving notice to the defendant of the slave's relation, and imposes a penalty on the defendant, if he do not then withdraw his protection.

We need not inquire whether *written* notice would be necessary, whether *verbal* notice would be sufficient, how vague the notice might be, whether it must be given *directly*, served *personally*, *published* or *printed*. The objection is, not that an insufficient or unartificial notice is averred, but that no notice whatever is alleged.

If this argument be sound, this court will direct the circuit court to arrest the judgment, because the declaration is insufficient. It is true, that in the second count it is averred that the defendant "Had notice that the said Andrew was a slave of the plaintiff, and a fugitive from labor." But this alleged notice is merely *general* and *vague*, and it is not shown how, when, where, or by whom it was given; *it is not shown that the defendant had notice that Andrew was held to labor, to the plaintiff in Kentucky, by the laws thereof*, or that he fled from Kentucky. An averment of notice so vague as that contained in the second count is as bad as no averment.

The constitutional provision, on the subject, is, that "No person held to service or labor in one state, under the laws thereof, es-

* Comyn's Digest, Condition 10, 11.

† Dana's Abridgment, Pleading Chapt. 177. Art. I. Section 2, 3. and Vol. VI. p. 26.

caping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up *on claim* of the party to whom such service or labor may be due."* The statutory provision is, that when a person held to labor in any of the United States, under the laws thereof, shall escape into any other of the said states, the person to whom such labor is due, his agent or attorney, may seize or arrest any such fugitive. And further, that when any person shall harbor or conceal *such person*, after notice that he or she was a fugitive from labor, *as aforesaid*, he shall forfeit and pay, &c.† The notice required by the statute, so far from being merely formal, or indefinite, is identical, with an actual claim of the fugitive by the master or his agent. The constitution requires a claim; the statute contents itself with a notice; and the declaration dispenses with both.

The pertinent averment, in the first count, is in these words:— "For that whereas, a certain person, to wit, Andrew, aged about thirty years, Letta, aged about twenty years, on the 23d day of May, 1842, at Boone county, in the state of Kentucky, was the slave of, and in possession of the plaintiff, and his property, and owed service, and was held to labor to the plaintiff by the laws of Kentucky, unlawfully, wrongfully and unjustly, without the license, and against the will of the plaintiff, departed and went away from and out of the service of the plaintiff at said Boone county, and came to the defendant, at Hamilton county, in the state and district of Ohio, and was there a fugitive from labor, and the defendant well knowing that said Andrew was the slave of the plaintiff, and a fugitive from labor," &c.

The second count contains the following statement—"Whereas, on the day and year aforesaid, at said Boone county, a certain person, to wit, Andrew, aged about thirty years, was the slave of, and in the possession of the plaintiff, and his property, and owed service, and was held to labor to the plaintiff, by the laws of the state of Kentucky, did, unlawfully, wrongfully, and unjustly, without the license or consent, and against the will of the plaintiff, depart and go away from, and out of his service, to wit, at Boone county, aforesaid, and came to Hamilton county, in the state and district of Ohio, to the defendant. And the defendant *had notice*

‡ Constitution U. S. Art. iv. § 2. † Act 1793, § 3, 4.

that the said Andrew was the slave of the plaintiff, and a fugitive from labor; yet afterwards," &c. &c.

Thus, the declaration, is silent throughout, as to a *claim*, while a claim is rendered indispensable by the constitutional provision. Not only is the averment of notice unfortunate, in its omission to show the facts which are necessary, but it is erroneous in showing facts which are irrelevant.

The person to whom harborage and concealment are denied, is a fugitive from labor, and that kind of fugitive is one who is held to labor in Kentucky, under the laws thereof, and who has escaped into Ohio. The obligation of the defendant is fixed, when he harbors such a person, after receiving notice that he is so held to labor, and has so escaped. No such person it described in the declaration. The counts abound in impertinent matter. First, we may strike out all that is said of Andrew's age. Again, we may strike out all the averments that he was the slave of the plaintiff, that he was in his possession, and was his property. If these averments were designed to show that Andrew was held to labor to the plaintiff, under the laws of Kentucky, they are bad, because they are merely argumentative. The statute describes a person held to labor under the laws of Kentucky. Whether he was *bond* or *free*, in, or out of the plaintiff's possession, the property of the plaintiff, or owner of the plaintiff, is absolutely unimportant. Facts must be *stated* in pleading, not argued. Only two simple facts were to be stated, viz., that Andrew was held to labor to the plaintiff in Kentucky, and that he escaped out of that state into Ohio. The allegations that Andrew was a slave, was property, and was possessed by the plaintiff, present facts from which the court are required to *infer* that Andrew was held to labor by law.

Not only do these averments constitute an argument, instead of a proposition, but the argument is defective and bad. It proceeds upon the ground that all slavery is lawful. But slavery is a condition which may be created or acknowledged by law, or it may exist without law, and in defiance of it. It consists merely in a subjugation of one person to the power of another; a subjugation so complete, that the sufferer is deprived of all rights, political, social, and domestic. A prisoner in a penitentiary, or in unlawful duress, is a slave—merely a slave. A man may be that abject thing, made so by law, or in defiance of law, and yet not at all be

held to labor to any person by the laws of the state. Nor do the averments that Andrew was the property of the plaintiff, and was in his possession, aid the argument. In their broadest latitude, they only reaffirm the fact that Andrew was a slave. Property and possession, in common speech, are predicated as incidents belonging to the relation of master and slave; but the terms are inaccurate, without foundation in law, and essentially false. The averments that Andrew was the property of the plaintiff, and that he was in the possession of the plaintiff, contradict the very proposition which alone is essential, viz., that Andrew was held to labor by law. Slaves can make no contracts; they are held by force, not by laws, and can assume no obligations. None but a reasoning, moral, accountable being, can be held to labor by *law*. Hence, the propriety of the term *persons* in the Constitution and in the statute; for only *persons*, not *things*, can be "held" by force of legal obligation. It would be palpably absurd to say of a sheaf of wheat, or of a marble shaft, or even of a dog, a horse, or an elephant, however absolute the rights of property, or possession, over it, that the senseless thing was "held" to stand, or move, or labor, by the laws of the state. If Andrew were a thing or a brute, then he could not be the subject of an obligation to labor. The institution of slavery accustoms us to confound the broadest distinctions in nature, not less than to subvert the plainest principles of justice. The right of individual property is derived from the consent of the Creator. When he had finished a world, and filled it with bounties, he gave to the last being created to inhabit, and the only one capable of governing it, DOMINION, or the right of property, and that dominion was universal; and, yet, man was excepted from it. The right of dominion by man over inert matter, and irrational beings, could not be complete, if one man could be made the property of another man, or could be reduced into his possession. Happily, God has deprived us of the power to abridge this great dominion in such a way, by making the mind, the soul, the heart, the affections of every man, more truly independent of all human power than the subtlest and most elastic substance unendowed with life. We may then safely strike out of this declaration all the averments of possession and property, and the argument of Andrew's *obligation to labor, by law*, will then rest upon the naked proposition that he was the plaintiff's slave.

I illustrate the objection already made by asking your honors to suppose, that this were an action by a citizen of New York against a citizen of Pennsylvania, and the declaration remained in the same form. Would not the averments that Andrew was a slave be palpably absurd, and would it not be absolutely impossible for the court to infer that he was held to labor in the state of New York, from the fact, that he was a slave of the plaintiff there? He might, indeed, be a slave, even there; and lawfully so: and yet, be held by no obligation to labor. A declaration cannot be good in an action by a plaintiff residing in Kentucky, which would not be good in an action brought by a citizen of New York, unless it showed by apt averment that a citizen of Kentucky had rights concerning the subject matter which were not enjoyed by the citizens of New York.

Again. The pleader has supposed, that a legal obligation to labor is a consequence of slavery, especially if tolerated by law. But slavery is a condition, subject to many modifications. Will our adversaries deny, that the constitutional protection given to the master, and the legal remedy given by statute, are as effectual to recapture as well the infant, the female, the decrepit slave, as the vigorous and manly Andrew? But will not your honors require it to be shown, that such persons, although slaves, in Kentucky, are held to labor by the laws of that very enlightened commonwealth? The princes of India, the barbarous chiefs that roam over the deserts of Africa, and the Indian warriors of our own forests, are all slaveholders; yet even their unbridled despotism distinguishes between the vile subject of menial servitude, and the fair captive who yields the pleasures of a princely bed, or the heroic prisoner who is detained in honorable bondage as a hostage, or for ransom, or, it may be, for sacrifice. When slavery is asserted here, what is meant is slavery as understood in the common speech of mankind, and in that common speech an obligation to labor is not an indispensable attribute of that relation. It is not all of death to die—nor is it all of slavery to labor. Strike then, from this declaration the averment that Andrew was a slave, and nothing will remain to indicate the right of the plaintiff to deprive him of "harborage," but the averment which, following the very general language of the statute, says, he was held to labor.

The person who may not be harbored is a fugitive, who by virtue of the municipal law is held to labor for another person,

and who escaping from his servitude may be seized, or arrested; and this court have said he may be seized or arrested without proof or even process, and may be transported back in bonds and chains, and with stripes, into his former estate of cheerless, hopeless, servitude. This portion of the Constitution and the statute were framed in derogation of natural and social rights. There may be states where persons are so held, but there are others where no such laws exist. Even in the communities where such laws prevail, there are many persons who are not subjects of so extraordinary a code. Far the largest portion of the People of the United States by whom, and for whose protection and happiness the Constitution was established, are not and by virtue of their constitutions, cannot be subjected under any such laws. There is therefore, a lawful presumption in favor of every man, in the United States, and of every man in Kentucky, and of every man in Ohio, even of this unhappy Andrew, that he is free from legal obligations of menial servitude.

Again. It is a duty of the citizen, and a duty of man, in every social state, and even in savage life, to give necessary shelter, comfort, and sustenance, to the wayfaring man, the stranger, and the fugitive. Such exiles have a natural right to demand protection and charity. That right is sustained by divine laws. The act of 1793, however necessary, or even just its provisions, by forbidding hospitalities to a class excepted from among all other men, is in derogation of the rights of citizenship, and of manhood. Therefore it must be construed strictly for these reasons, as well as because it is a penal law. The plaintiff who complains, that his debtor has been wrongfully harbored, must show that he was held to labor under the laws of the state from which he fled; and when demanding the penalty, for forbidden charity, must show that the offender had notice that the guest was so held. Now this declaration fails to show any such thing. It is only charged that the fugitive was held to labor by the laws of Kentucky. But it is not shown by what laws, how enacted, and by whom, when, or for what cause—how the fugitive had incurred such calamitous disfranchisement, what was the nature of the labor to be rendered, and when to be performed? on what condition of birth, color, contract, or crime, disfranchisement attached; in what court or tribunal, civil, martial or chivalric, the fugitive had been heard before the penalty of the law was enforced? what was the form of the

judgment, what was the period of his disfranchisement; and when it would end? The words "held to labor to the plaintiff, by the laws of Kentucky" give no information. Whether the defendant was so held, is a question of *law;* an inference to be drawn from facts to be stated. But here the inference only is charged, without any facts from which it is drawn. By the laws of Kentucky, a debtor is held to perform a decree of its courts. In an action on such a decree, would a declaration be sustained, which charged merely that the defendant was held to perform a decree in favor of the plaintiff, without showing either the statute, the jurisdiction of the court, the cause of action, or the substance or form of the judgment?

Nor is this declaration less unfortunate in charging that Andrew was a fugitive. The language of the act describes the fugitive as "one who shall escape into any other of the said states." The person described in the declaration is distinguished as one "who unlawfully, wrongfully, and unjustly, without the license or consent, and against the will of the plaintiff, *departed and went away* from and out of the service of the plaintiff in Kentucky, and came to the defendant in Ohio, and was there a fugitive from labor." These latter words have the same vice with other portions of the declaration already examined. They charge an inference in law, derived from previous facts. If the facts be sufficient, an averment of the conclusion is superfluous. If the facts be insufficient, the conclusion fails. We therefore strike out the words "and was there a fugitive from labor," and then nothing is left but studious circumlocution, to evade a statement of the essential fact that Andrew not only *escaped* from servitude in the place of his detention in Kentucky, but effected a continuous escape into the state of Ohio. It is not enough that he "*departed* and *went away* from and out of the plaintiff's service in Boone," nor yet enough that his departure was unlawful, was wrongful, was unjust, was without license or consent of the plaintiff, and against his will. All this might be true, and yet there might be no escape. Under the law of slavery, every slave who is absent from his master's plantation or workshop, without a pass, has unlawfully, wrongfully, and unjustly, and without license and consent of the plaintiff, and against his will, departed and gone away, yet he has not, therefore, *escaped.* A child, who without giving notice, withdraws from the

domestic circle, a truant school-boy who steals unobserved into the fields, does not *escape ;* he is not a *fugitive.* There can be no escape where there is no duress—where there is no watch—where there is no flight—where there is no pursuit—no effort at recapture. Again. An escape from one state into another must be a continuous act. We do not say that there may not be relaxation of speed, loitering by the way, and intervals of time, but we humbly insist that there must be consistent, persevering purpose, manifested by continued motion. The master may, by his neglect, convert the escape into peaceful, lawful departure—forego his rights by failing to assert them—waive his obligation of service —and consent that the fugitive take rank as a free man and a citizen, among a community who acknowledge, as a universal truth, that the laborer is worthy of his hire.

Thus it has been shown, that Andrew was not a fugitive from labor. It remains to be observed, that the defendant had notice, and can be deemed to have had notice, only of the character and condition of Andrew, as they are set forth in the declaration. And it follows, that the defendant had not sufficient legal notice that the recipient of his charity was *a fugitive from labor as aforesaid.*

Thirdly. The declaration is insufficient, because it does not sufficiently show that the alleged fugitive was harbored or concealed by the defendant. The averments are vague, and state only, that the defendant " knowingly and willingly harbored, and detained, concealed, and kept the said slave, in consequence of which, the plaintiff lost the slave, his service and its benefits." Where harborage and concealment are taken by a statute from the category of benevolence, and converted into crimes, the circumstances which impart criminality must be shown, that the court may determine whether a crime has been committed. A warrant for larceny could not be granted by any magistrate upon a complaint that the accused did *steal* certain chattels, however particularly described, without an explicit account of the time, place, manner, and circumstances of the transgression, so that it might be known whether the taking of the property was innocent or felonious. The declaration in this respect, as in all others, is not aided by the general words, "wrongfully," and "unlawfully, wilfully and knowingly.* The rule here claimed is universally applied in

* Gould's Pleadings, chap. iv. § 29.

pleading. An indictment for murder is bad if it do not show how the crime was committed, and describe the instrument, the wound, and the death. A declaration for an assault must describe the weapon; for slander, must specify the words; for trespass, the manner of committing the violence; for an assumpsit, the promise; for a debt, the obligation.

Again, the offence, whether of harboring, or of concealing, must be fraudulent, and be so described. In Dark *vs.* Martin,* the action was brought for harboring a slave. The defendant showed that he detained the servant under a claim of title. The court decided that the action could not be sustained.

POINT II.

The Evidence was Improper and Insufficient.

1. It appears from the questions certified by their Honors, the Judges of the Circuit Court, that no notice whatever of the alleged fact of the defendant's legal servitude, or of his escape, was communicated by the plaintiff, or any person in his behalf, either in writing or verbally, to the defendant, before he committed the acts of harborage and concealment complained of. If the court sustain the positions which have been already illustrated, they will instruct the Circuit Judges, that proof of knowledge by the defendant, that Andrew was a slave and a fugitive, however clear, and however acquired, was not equivalent to the notice required by the statute, or a substitute for it. The act of 1793 can only be sustained by treating the notice which it prescribes as a claim of the fugitive made by the master. Such claim could only be made by him directly or indirectly, and an equivalent notice must of course proceed from him. Whether it should be averred with due particularity, in the declaration or not, it must at least be proved.

2. The proof of harborage and concealment was insufficient. The fourth, fifth, sixth, seventh, and eighth questions certified by their honors, the Circuit Judges, present the acts of harborage and concealment, namely, that the defendant received the fugitive on the Walnut Hills, in the suburbs of Cincinnati, at three o'clock in the morning, from another person, into an open or covered wagon, and conveyed him thence, twelve or fourteen miles.

* 2 North Carolina Law Repository, 249.

Pursuers appeared, who had no authority from the master, and who arrested the horses. The fugitive leaped from his seat in the wagon and escaped. The master afterwards approved the attempt at recapture made by the pursuers, although it had been made without his knowledge. These facts might prove the defendant guilty of aiding the escape of the fugitive, or of obstructing or hindering the claimant, his agent or attorney, in seizing and arresting the fugitive, but it is a total perversion of language and sense, to maintain that they prove an act of harborage. A harbor is a place of *rest*, *repose*, *security*, *inaction*. In its nautical sense, which is not its original application, it is a *haven*, where the vessel is moored, its sails are furled; its burden discharged, or a new one received. The French designate one of their principal ports *La Havre*, and we one of ours, *New Haven*. The idea of motion, progress, flight, or escape, is absolutely excluded. The vessel is exposed to search and seizure by all who have lawful right to enter the haven. The meaning of the word in its original application to a place upon the land is not less definite and exclusive of ideas of motion, progress, or action. *Her berg*, the hill, or secure place where the army rested on its march. No word in our capacious and ever changing language has more obstinately retained its original significance. Whether the subject of its application be good or bad, the word invariably implies *rest*, a home. Thus, an old poet says:

> "But worthy of her trade, which most of all her grieves,
> The basest beggar's bawd, a *harborer* of thieves."

So beauty and precision were both sacrificed by our modern translators, when they dropped the word which they found in Wickliffe's Bible, "For I was hungrey and yee gave me meate, thirsty, and yee gave me drink, naked, and yee clothed me, *harbouryeless*, and ye visited me."

So another translator, if it be not profane to say so, imparts force and elegance to the language in which the Holy Spirit describes the Love which opens the gates of Heaven, and makes its test to be—

"Whether she have to her smal power ben *herberous* to the Sainctes, lodged them, and washed their fete."

The common law, although it abhors slavery, has been made by American legislators, to furnish the form of remedies for the recaption of fugitives, and affords us apt and conclusive illustrations

to prove as well all the points before maintained, as that now under argument. Thus under the statute of 23d, Henry II. in the new *Natura Brevium* 167–168—"if a man retain my servant, whereby the servant departeth from me, *and goeth to serve the other*, I shall have an action against him; but if the new master did not know that he is my servant, no action lies, unless he afterward *refused to restore him upon information and demand*."

So the English pleader is informed by Jacobs in his law dictionary, that harboring does not mean aiding a servant to flee, and also, that it is advisable to *give notice* to the intended defendant that the party is servant to the plaintiff, and to *demand* him. The author adds—"*that proving such notice, and a subsequent demand, will entitle the plaintiff to a verdict.*" These excellent instructions were derived from that inexhaustible volume of sound law, the new *Natura Brevium*.

"An action will lie for *continuing* to employ the servant of another AFTER NOTICE, though the employer did not procure the servant to leave his master."*

Thus it appears that the evidence upon which the defendant's conviction rests was improper and insufficient, under the first count; because, *first*, it showed not an act of *harboring*, but the antagonistical act of *removing* a fugitive; *secondly*, because there was no evidence of the previous notice and claim, which were necessary to maintain the action.

The evidence under the *second* count, (which charges an act of concealment of the fugitive,) is subject to the same exception. Harboring and concealment are convertible terms; or at most, the offence of concealment is created to prevent an escape from conviction under the very technical offence of *harboring*. The act of concealment, when charged, must be clearly and distinctly proved. *Concealment* implies a place, time, and circumstances of seclusion—a roof, a chamber, a dell, a forest, a cave or some place of the like solitude. And yet their honors, the judges of the circuit court, have propounded to this tribunal the question, "whether the transportation of a person in an *open* wagon, attended by *eight others*, on the high-road, from the Walnut Hills, which overlook the populous city of Cincinnati, forty miles on the high-road towards the busy town of Lebanon, was not a *concealment*." It is true that this journey was begun at three o'clock in the morning,

* Black vs. Layton, 6, Durnford & East, 221.

and one of the questions modifies the case by assuming that the wagon was covered, (by a curtain or a sheet). But vehicles which secure their inmates from observance, or from inclement weather by more substantial screens, are in universal use; and are never resorted to for purposes of solitude, especially when in motion upon the high-way, exposed to the intrusion of the idle, the inquisitive, and the malicious. In the nature of things, such carriages afford no *harborage*, and furnish no *concealment*, though they may be used for the purpose of reaching both. If the shades of night covered the fugitives on their departure from the Walnut Hills, they equally concealed at the same hour, the master, the pursuers, and the world around. The darkness was an adventitious circumstance. The day must have dawned on the Walnut Hills, (April 23d,) as early as 3 o'clock. But if this be incorrect, the sun was sure to set on the dwellers in Lebanon, before the fugitive could have reached that anticipated harbor. We admit that the circumstances raise a presumption of an intention or purpose to prevent a recapture. But that is not now in question.

The only question is, whether the plaintiff *harbored* or *concealed* the fugitive, After Notice and Claim.

Thirdly. There was no proof that Andrew had *escaped* before the defendant received notice and harbored him. It has been already said that the term *escape* has a fixed and precise meaning, and implies more than simple unlicensed absence. Yet such absence only was proved. The word *escape* comes to us from the French *Echappér*. It is never applied to merely open, simple, *unlicensed* departure, but implies escape from *constraint*, or *duress*, and includes ideas of *flight*, *pursuit*, or *design to pursue*.

> "When his person *eagerly pursued*,
> "Hardly, by boat, *escap'd* the multitude."
> *Daniels' Civil Wars.*
>
> "*Bos.* He is *fled*, Hee is *fled*, and dares not sit it out.
> "*Bro.* What, has hee made an *escape?* Which way?
> Follow, Neighbor!"
> *Bartholomew Fair.*

The principle here insisted upon, is in harmony with the decisions under the code of slavery. There are many cases in which it has been decided that *escape* does not apply to a case where the slave has been carried out of the state by his master, although he then delivers himself by flight.*

* Ex parte, Simons, 4 Wash, C. C. R. 396.

Now not only is no *escape* from Kentucky into Ohio charged, but none was proved. All we know is that the slaves were *found* in Ohio by the defendant. We humbly submit that this court should instruct the circuit court of Ohio, that it must be clearly and satisfactorily shown in this action, not only that the alleged fugitive was held to labor by law in Kentucky, but that he escaped into Ohio.

POINT III.

THE LAW OF 1793 IS IN CONFLICT WITH THE ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY NORTHWEST OF THE OHIO, PASSED 1787, AND IS THEREFORE VOID.

A great diversity of opinion exists in the United States, concerning the proper construction of the Constitution of the United States, in relation to slavery. Some receive it as a gospel of universal emancipation, and others as a covenant of perpetual toleration of slavery. Those who maintain the latter opinion, fortify themselves with arguments derived from the condition of the country and the spirit of the times when the Constitution was established. It seems to me that truth is found on both sides of the controversy. The Constitution of the United States in its general scope and spirit, recognizes the absolute natural rights of mankind, and it contemplates an ultimate condition of perfect democratic liberty and equality. On the other hand, it contains provisions (adopted doubtlessly by way of compromise), which have served but too well to fortify an institution whose existence nearly all reflecting and candid men deplore. Slavery is only the negation or privation of that liberty which is the birthright of all men. It results from an ascendency of physical force which always obtains in rude communities, and never finally disappears in any state, until intellectual and moral agencies are fully developed. Let slavery receive what name or form it may, it is always the same—subjection of the weak to the strong. The progress of our race is so slow, that Liberty never all at once, achieves an absolute triumph, and every advantage gained is followed by reaction. Thus African slavery, unjust as it is conceded to be, long as it has endured, and long as it may be yet destined to endure, is only the reaction of the principle of physical force by which it has compensated itself for the loss of feudal villeinage, in the sixteenth century in Western Europe. So the emancipation of Europe seems

to have mysteriously drawn after it the desecration of a new continent, with a darker, more degrading, and severer system of oppression. Labor was needed to reclaim, suddenly, a wide domain from the sovereignty of Nature. Voluntary labor stood upon terms too high for contract, and therefore physical force sought and subjugated involuntary labor. Slavery, wherever found, was not created by law, but obtained its establishment by evasion or subversion of law. It spread at an early period throughout Virginia, although the charter secured to all whom the colonial corporation should lead thither "all the liberties, franchises, and immunities of free denizens, and natural subjects within any of the British Dominions, to all intents and purposes, as if they had been abiding at home, within the realm of England, or in others of his majesty's dominions."* Slavery was thus excluded by royal inhibition from the territory now included within the state of Kentucky, and yet it took root and flourished in defiance of law, until it overshadowed the state. The cause of human liberty, however baffled, never rests, and in the eighteenth century it had borrowed new vigor from philosophy and the diffusion of Christianity. The movement for the abolition of slavery, which now excites so much apprehension in portions of our country, is by no means as modern, as those who think it can be suppressed, suppose. It began in a meeting of Friends, in London, in 1727, and proceeded so slowly that it did not expel the institution from the British dominions until after the lapse of one hundred and seven years. Fifty-six years were spent before the abolitionists could obtain a reading in the British Parliament of a petition for the suppression of the slave-trade, and that trade was not finally abolished within what were the British colonies on this continent, until 1807. The agitation of abolition in England, reached, and sensibly affected the colonies previously to the Revolution, and the Declaration of American Independence bears memorable testimony of the high tone which the American mind had then assumed. The representatives who assumed to pronounce in 1776, a separation of this country from the parent state, were so deeply imbued with the sentiment of abolition, that they confided the task of preparing the immortal declaration to John Adams, an obstinate hater of slavery, and Thomas Jefferson, a young, enthusiastic, and open abolitionist. But emancipation was destined in its turn to suffer reaction. The

* Charter of Virginia, by James 2d, 1609, Littell's Laws of Ky. vol. 1. p. 11.

next legislative proceeding in which we discover traces of public sentiment on the subject, are the Articles of Confederation, adopted on the ninth of July, 1778. Although only two years had elapsed, Congress, in establishing the elective franchise, no longer spoke of all men as "free and equal," but provided for securing liberties and privileges to the FREE inhabitants of each of the states. Nevertheless emancipation maintained a retarded progress. In 1780, the peaceful and spiritual disciples of Penn, abolished slavery in the republic he had founded on the shores of the Delaware, and the descendants of the Pilgrims, in the same year extended the blessings which they enjoyed to the slaves remaining within the state they had founded around the Bay of Massachusetts. But Virginia had cherished the viper in her bosom so long, that its poison was diffused throughout her whole frame. Although she had given to the world the author of the Declaration of Independence, and the more awful character who had established that charter of universal freedom, she was not prepared to relinquish slavery.

When the revolution had closed, and while the articles of confederation were yet in force, some five thousand persons had made a settlement on the northern bank of the Ohio, and were extending civilization over a wide and beautiful region, washed on the north by the distant northern lakes, bounded on the east by Virginia and Pennsylvania, and reaching westward to the Spanish possessions on the banks of the Mississippi, over which several states asserted conflicting claims of sovereignty. On the thirteenth day of July, 1787, Congress, then representing all these states, with their consent established an ordinance concerning that domain. This act provided for the subdivision of the territory into states, and their admission, when sufficiently populous, into the Federal Union. Under that ordinance, four states have been erected and admitted, which are now represented in the federal councils by eight senators and thirty representatives, and contain two millions of free and prosperous people. The people, in the comprehensive use of the term, include all men within a particular jurisdiction. To secure the people within that territory, throughout all generations, against any possible intrusion of the principle of physical force in their respective communities, it was solemnly declared and promulgated by that ordinance, that its design was to extend the fundamental principles of civil and religious liberty,

which formed the basis whereon the American republics, their laws and constitutions were erected; and to fix and establish these principles as the basis of all laws, *constitutions*, and governments which forever thereafter should be formed in the said territory, and for admission of the states thus to be created to a share in the federal councils, on an equal footing with the original states, at as early periods as might be consistent with the general interests. It was farther declared that, for those purposes, the articles of that memorable ordinance were set forth and should be considered as ARTICLES OF COMPACT between the original states and the people and states in the said territory, and should forever remain unalterable, unless by common consent. The ordinance then proceeded to lay the foundation of those future states, and the *first* was a declaration of absolute and universal liberty of conscience. The *second* secured to every inhabitant of the territory, then and thereafter, forever, the *writ of habeas corpus*, and the right of bail. The *third* united in auspicious conjunction guaranties of moral and religious education to youth within the territory, and of perpetual good faith to the Indian nations. The *fourth* was a guaranty to the new states to be formed of a right of union with the original states, on the sole condition that such new states should adopt forms of government which should be republican, and in *conformity to the principles of that fundamental compact.* The *last* and crowning one of all was this declaration :—*There shall be neither slavery, nor involuntary servitude, within the territory, otherwise than in the punishment of crimes* (*with this* SOLE *qualification,*) *provided, always, that any person escaping into the territory, from whom labor or service shall be lawfully claimed, in any one of the* ORIGINAL *states, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her service.**

This ordinance took effect on the 13th of July, 1787, and even if it do not control the Constitution, which was adopted about the same time, it is a valuable cotemporaneous exposition of the temper and sentiments of the American people on the subject of slavery. Kentucky was admitted into the Union on the first day of June, 1792; five years after, the ordinance for the government of the territory north-west of the Ohio was established. The Constitution of the United States bears date in September, 1787, but went into effect on the 4th of March, 1789. Kentucky, having

* Benn's Laws U. S. vol. I, p. 60.

come into the Union after that ordinance, was bound by its covenants. The Constitution of the United States was adopted after that ordinance, and so far as related to the territory north-west of the Ohio, was necessarily and inherently subject to the same covenants. The word ORIGINAL, in the ordinance, manifestly implies that the right to recapture fugitive slaves should be limited to the thirteen states then in existence, and Kentucky, by entering the Union afterward, acquiesced in that solemn agreement. Ohio has the distinguished honor of being the first of the twenty-nine confederated American states whose soil never received the imprint of a slave. Ohio came into the Union in 1802, with a constitution jealously reciting the ordinance of 1787, and expressly declaring its continued validity, and elaborating its fundamental principles in these emphatic words:

"*There shall be neither slavery nor hereditary servitude introduced within the state otherwise than for the punishment of crimes whereof the party shall have been duly convicted; nor shall any male person who shall have arrived at the age of twenty-one years, or female person who shall have arrived at the age of eighteen years, be held to serve any person as a servant, under the pretence of indenture, or otherwise, unless such person shall enter into such indenture when in a state of perfect freedom, and on condition of bona fide consideration, received, or to be received, for their service; nor shall any indenture of any negro, or mulatto, hereafter made and executed out of the state, or if made in the state, where the term of service exceeds one year, be of the least validity.*"

On the 23d of April, 1842, Andrew, a man of thirty years, was found on the Walnut Hills, in Ohio, at large, a freeman—free as to all the world, at least, except the person who had before claimed his services in the state of Kentucky. There could be no slavery or involuntary servitude in Ohio. By what right was he pursued, and by force of what law was it wrong to *harbor* and *conceal* him from his pursuers? We are answered, "By the law of 1793." But that law was a violation of the ordinance of 1787, so far as the state of Ohio was concerned, if it be construed to extend the right of recapture beyond the *original* thirteen states, to the infant state of Kentucky. Kentucky was not one of the original states; she came into the Union after notice of the ordinance, and acquiesced in it. But it may be said, that the Constitution had interposed between the ordinance and the admission of Kentucky. This is true; but the Constitution was framed when there were only the original thirteen states; and it was to be expounded as to the new states northwest of the Ohio, by their fundamental ordinance. The new states—the future states—the future generations—northwest of the Ohio, had made a solemn compact with

the thirteen states, which was to be the basis of all new constitutions. The Constitution was cotemporaneous with the compact made between the existing and the future states. The Constitution was never held then or since, to supersede or impair that compact. It was recognized as being in force by the act of Congress of 1800, which prescribed to the new state of Ohio the basis on which it would be admitted into the Union, recited from and in the very language of the ordinance itself. It has been seen that Ohio came into the Union with a Constitution carefully framed in the form and structure thus prescribed by the ordinance which was made before the Constitution, and by the act of Congress passed after it.

Is the ordinance of 1787 yet in force? His honor the presiding judge of the circuit court, doubted. But surely that ordinance is perpetual: for it was a treaty generously made by an intelligent and powerful confederacy, with four states yet unborn—a covenant between the strong and vigorous actors of the present, with unseen and unknown generations of the future, for the security, welfare, and happiness of all; and it was not to be changed, least of all was it to be changed by those who thus made it for the benefit of all, without the *common consent of all.* The thirteen states who united in forming the Constitution could not change it, although all agreed. Ohio could not change it, for she was only one of four new states, whose consent was necessary, and the three others had not yet come into existence. If that ordinance be not in force, then Ohio, Illinois, Indiana, and Michigan may severally, at their pleasure, establish slavery and hereditary servitude, and entail their calamities and curses upon future millions, to whom the thirteen United States have pledged a guaranty against them forever. If the ordinance be not in force, then the other twenty-four states are without any security against the collisions and the desolations which the establishment of slavery in the northwestern regions of our country would be sure to produce.

Ohio came into the Union a sovereign state—a nation. The Constitution and the ordinance, in her hands, contained nothing which conflicted with the sovereignty of the original states; for they had already declared that the principles of that ordinance, heretical as they may now be deemed, *were the basis of their own Constitutions.* By the law of nations, no state is bound to recognize slavery in any other state, or to surrender fugitives from labor or service, or even those charged with or convicted of crimes.

If a nation assume any such obligations, it does so from comity merely.* The law of 1793, if extended so as to cover the relations between Ohio and Kentucky, would oblige Ohio to recognize slavery in a *new* state, which had no compact to that effect, and would subvert the Constitution of Ohio, by introducing slavery among that people, to a certain extent. His honor, the presiding judge of the circuit court, says that the act of 1793, does not conflict with the ordinance, nor purport to repeal any of its provisions, or modify them. But the act does affect to secure the right of recaption to the state of Kentucky, which was not an original state.

Again. The same very learned judge, says the Constitution does not prohibit Congress from extending the power of recapture to *new* states. Let us test this argument. Suppose that the thirteen states in Convention, had adopted a Constitution which declared, that slavery should be established within the territory northwest of the Ohio, notwithstanding the ordinance of 1787. Will any one contend that the state of Ohio, when its government should have been formed upon the basis of that ordinance, could have been *denied* admission into the Union? Certainly not. If, then the thirteen states could not introduce slavery into the territory northwest of the Ohio, *directly* and completely, and *for all purposes*, they could not introduce it there *indirectly*, or for a single purpose.

The article in the Constitution, which provides for the recapture of fugitives, secures a privilege to the slave-holding states, which they are at liberty to waive or relinquish. Kentucky, being a member of the Union, when Ohio was admitted, with a constitution limiting her obligation to surrender to the original states, exclusive of the new states, relinquished the doubtful benefits of recaption.

Again. In any case of doubt on a question of constitutional law, there is a strong legal presumption against slavery. The construction insisted upon by our adversaries involves, in the first place, a breach of faith, with new and powerless communities, and future generations; and, in the second place, an offence against liberty, humanity, and the welfare of mankind.

I conclude my argument upon this interesting part of our subject, by humbly directing the attention of the court to authorities which establish, first, that the ordinance of 1787 remains in full

* Prigg *vs.* Pennsylvania, 16, Wheaton, 611.

force; and secondly, that the ordinance has the effect to abolish slavery for every purpose within the territory northwest of the Ohio, so that a slave coming there from the Spanish possessions is, by the mere act of treading upon the soil, redeemed and emancipated.*

POINT IV.

THE LAW OF 1793, SO FAR AS ITS PROVISIONS AFFECT THE QUESTIONS NOW BEFORE THIS COURT, IS UNCONSTITUTIONAL AND VOID.

The law is based upon the second section of Article IV. of the Constitution. "No person held to service or labor, in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up, on claim of the party to whom such service or labor may be due."

If we admit, for the purpose of the argument, that this section furnishes ground for the exercise of legislation, by the Congress of the United States, to carry the section into execution, we may, nevertheless, confidently assert, that such legislation must be confined to the very object and purpose of the section, and cannot be extended further. If any state should pass any law, or establish any regulation adapted to work a discharge of persons escaping into its jurisdiction from lawful obligation of labor or service, existing in the state from whence they fled, or to prevent their delivery to proper claimants, Congress might abrogate such law or regulation. But such an act of abrogation would be unnecessary, because the offensive law or regulation would be unconstitutional, and *ipso facto* void. Here the constitutional power reposed in Congress to legislate on this subject must end; for the object of the second article is attained when such action or legislation by the several states, is effectually prohibited or defeated. We admit that the section provides that the fugitive "shall be delivered up, on claim of the party to whom such service or labor may be due." But these are merely words of explanation, giving precision, force and effect to the inhibition of the passage of laws or adoption of regulations by the states for the discharge of fugitives. Any law or regulation of a state, which may work the discharge of the fu-

* Story on the Constitution, Vol. 3, 183, 189. Green vs. Biddle, 8, Wheaton's Reports, 87, 88. Henry and others vs. Decker and Hopkins, June 1, 1818. Walker's Mississippi Reports, 36. Wheeler on Slavery, 340. Menoud vs. Aspacia, 5, Wheaton, 515.

gitive, shall be so absolutely void, that not only such consequence shall not take effect, but the right of recaption shall not be at all affected by such law or regulation. The section would have full, complete and satisfactory effect through judicial action. If a person in any court of any state claimed that another who had escaped into its jurisdiction was lawfully held in the state from whence he fled, to labor for the claimant, and if the defendant being either the person against whom the claim was made, or any other person, or even the state within whose jurisdiction the fugitive was found, should interpose by plea any law or regulation affecting to discharge him from such obligation imposed by the law of the other state, that plea should be overruled. The second section would necessarily receive this complete effect by the adjudication of the courts of law of the United States, and of every state, without any interposition by Congress whatever. No law of Congress could give to the section any greater force, effect, or power; because all laws must be tried by the Constitution before the Judiciary. It results from this that the court in which such a claim should be asserted, would be confined to try the questions first, whether the alleged fugitive from labor was held to labor to the claimant in another state by the laws of that state, and secondly, whether he had escaped from that state into the state where he was found. And the court would have a right to decide upon the validity of the laws of the other state, by which the fugitive was alleged to be held to labor, and be obliged to decide upon them as courts now do in all cases of conflict of laws. The court would be restricted in this judicial proceeding, only in two respects; first, they must not allow a plea of any law or regulation of the state where the fugitive was found, to work his discharge from an obligation created by the laws of the state from which he fled; and secondly, the court might perhaps be obliged, by the last clause of the section, to pronounce judgment, that the fugitive should be delivered to the party who had established the claim to the labor or service of the fugitive. If it be assumed that the courts of the state, or of the United States, might disregard the constitutional inhibition: we reply, first, that Congress cannot presume, nor can this court presume, that any court would be guilty of a dereliction; and secondly, that the remedy could always be applied in a revision of the proceedings of inferior courts by the Supreme Court of the

United States, whose power on questions of constitutional law is higher than that of the legislature.

I am not unaware that the law of 1793 grew out of a discussion in the state of Virginia, which was *thought* to show that the constitutional provision was not sufficiently explicit, and direct, to execute itself *proprio vigore*. Nor do I deny that the Congress of 1793 believed the enactment of the law indispensable to give effect to that provision. Nor do I deny that in many cases in the courts of the states, and in one memorable case, at least in this court,* the law has been sustained. I am not ignorant that these cases are thought sufficient to preclude any discussion of the point now presented. I know that this court, like all other courts, will give effect, and ought to give just effect to the principle of *stare decisis;* and I am not ignorant that until very lately, there has been a measured acquiescence to the act of Congress, and the judicial decisions by which it has been sustained. But the principle of *stare decisis* has its legitimate bounds, even in the courts of common law; and it must be abandoned in every case where it is found, upon full and deliberate consideration, under the guidance of practical experience, or upon a further development of essential facts, that the decision insisted upon, however time-honored it may be, is erroneous. To deny this would be to assert that the past was more enlightened than the future, and that conjectural opinions are better than wisdom acquired by experience. Nor is *implicit* veneration due *to what is called* contemporaneous construction. The framers of the Constitution are justly deemed to have contemplated the growth and improvement of society forever, and to have adopted such general provisions as would be found practicable and expedient in distant ages. Constructions adapted to those ages must prevail, although they conflict with contemporaneous opinions and interests. All contemporaneous construction must take its form or hues more or less from existing interests. The Constitution was made by a convention who painfully felt that slavery existed, but who also joyfully foresaw that it would before long cease to be. The law of 1793 was passed because, when the Governor of Pennsylvania, in 1791, demanded from the Governor of Virginia three fugitives, not from *slavery*, but from *justice*, the Governor of Virginia answered that he was not authorized to comply by the mere authority of the Constitu-

* Prigg *vs.* Pennsylvania, 16 Peters.

tion of the United States, without more immediate and direct power, for which he appealed, through President Washington, to Congress. Thus it happened that Congress did, in fact, by the law of 1793, exercise legislative power concerning the recaption of fugitive slaves before any case had arisen in any state, which showed that the Constitution of the United States was ineffectual without legislation. Occasion was taken of an embarrassment concerning the surrender of fugitives from *justice* to fortify *slavery*, by giving it what then, at least, was unnecessary aid for the recapture of fugitives from labor. The plea then made for this bold measure was one, not of necessity, at least not of necessity proved, but of a mere analogy between the constitutional provision relating to the surrender of fugitives from justice, and the provision concerning fugitives from labor. It seems to us that the analogy which was the only foundation of the enactment, does not exist. In regard to fugitives from justice, the Constitution is direct and affirmative :

"A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up to be removed to the state having jurisdiction of the crime."

The principle of extradition of fugitives from *justice* is one so essential to the peace and harmony of contiguous states, that some writers upon the law of nations have insisted that it was entitled to a place in that code. While this opinion has not been generally sustained, it has been found expedient, by modern nations, and especially by affiliated states, to establish the principle by treaty or compact. Such has long been the case in the confederated cantons of Switzerland. The convention, while framing a constitution, designed to preserve harmony between the several states, and promote their welfare, naturally, necessarily, wisely, and, we believe, unanimously incorporated a provision for that purpose in the American Constitution. The provision adopted is direct, positive, and absolute. It describes with precision the person to be surrendered, "as one who being charged, in any state, with treason, felony, or other crime, shall flee from justice, and be found in another state." What constitutes, treason, felony, or crime, is assumed to be settled, and universally understood. The word *charged* has legal import, and implies a judicial or magisterial charge. The culprit shall be demanded by the executive authority of the state, and by no one else ; and it is fairly implied that

he shall be delivered up by the executive authority of the state where he is found, and by *none else;* since, if any other authority were obliged to execute the delivery, there would inevitably be clashing of the police of the several states. No difficulty was found in the Virginia case, except to remove the doubt of the governor of that commonwealth concerning his power to execute the surrender—a doubt quite unreasonable, and to be deeply deplored for the consequences which it has produced. Those who contend for an analogy between the two provisions find their cause so weak, as to be obliged to dwell upon the merely fortuitous circumstances that the two clauses concerning fugitives are found in juxta-position. But surely this argument is of no value, if the provisions exhibit a marked contrast. The clause concerning fugitives from labor, instead of being expressed in a direct and positive form, and of imposing an obligation and a duty upon the executive authorities of the respective states, is merely negative, imposes no such obligation or duty, and is content with merely denying to the legislative authorities of the several states power to hinder or obstruct citizens of other states in the assertion of lawful claims to labor or service. "No person held to service or labor, in one state, under the laws thereof, shall, in consequence of any law or regulation *therein*, *be discharged from such service or labor*, *but* shall be delivered up on claim of the party," &c. This is a mere announcement of a principle which shall be paramount, in courts of justice, to any local laws or regulations.

Nor is the origin of the principle of this latter clause, in any degree the same, with the source to which we have traced the principle of extradition of fugitives from *justice*. The latter is found in the comity of nations, and in the necessity of maintaining the cause of justice, of order, of law, and of government. The former has no such foundation. If by the words "persons held to service or labor" are meant, as some suppose, persons held by contract, we shall look in vain throughout the history of every civilized state, for a principle so much at war with human liberty, as the surrender of fugitive debtors. Some modern states allow to citizens, or subjects of other states, access to courts of justice, to enforce obligations of debt by the remedies given in similar cases to their own citizens. None ever surrendered—and none ever will surrender, a fugitive debtor, to be conveyed to the state where the obligation was incurred.

Another opinion exists, which is thus expressed by the late and lamented Justice Story: "The object of this clause was, 'to secure to the citizens of the slave-holding states the complete right and title of ownership in their slaves as property in every state in the Union, into which they might escape from the state where they were held in servitude.'" If this opinion be adopted, the very shadow of analogy between the two constitutional powers will vanish. For, by the general law of nations, none is bound to recognize the state of slavery as to foreign slaves, found within its territorial dominions, when it is in opposition to its own policy and institutions, in favor of the subjects of other nations, where slavery is recognized. There is not now, and never was, any such comity of nations, as dictated compacts for the surrender of fugitive slaves. No Christian nation would ever make such a compact. Every state has denied an obligation to surrender persons claimed to be slaves. It was truly said, by the distinguished judge last mentioned, that "if the Constitution had not contained the clause now under consideration, every non-slaveholding state in the Union would have been at liberty to have declared free all runaway slaves coming within its limits, and to have given them entire immunity, and protection against the claims of their masters." Therefore the clause is an abridgment of state sovereignty—it conflicts with the principles of natural and civil liberty, and contrasts, at least, strongly with the rights and privileges guaranteed to the citizens of all the states by the Constitution. It is, therefore, to be strictly construed. If strictly construed, the clause spends its whole force, in an inhibition of laws and regulations calculated, in one state, to work a discharge of fugitives held to labor in other states, by the laws thereof, and neither needs, nor contemplates, legislation by Congress, but relies, for its execution, upon the judicial authorities of the states and of the Union.

This argument derives much force, from the fact, that the Constitution does not, among its express powers, authorize Congress to enact laws concerning the arrest of fugitives from labor. Such a power is omitted from the long catalogue of legislative powers. We have read, with profound respect, the opinions of this Court, delivered in the case of Prigg *vs.* Pennsylvania, in which it was argued that Congress might exercise the power manifested in the act of 1793, from a supposed analogy to many cases in which the National Legislature necessarily exercises inferential

legislative authority, to carry into effect, constitutional provisions. But this reasoning fails to satisfy us, because it seems to us that in the first place, the necessity of legislation, under this claim of the Constitution, is *violently* inferred, and then another *violence* is committed by inferring an implied power.

The work of usurpation once begun, derives strength from precedent, and fearful force from judicial acquiescence. Thus it has happened in regard to the claim under consideration. The very structure of the provision shows that it was designed merely to limit and restrict the legislative power of the states, not to deprive them of all power to legislate concerning fugitives from slavery. No person held to labor by the laws of one state, and escaping into another, shall be discharged in *consequence* of any law or regulation of that state. This language plainly implies that any state may pass what laws, and establish what regulations it may deem expedient, and those laws will be valid and effectual, save only in one respect, namely, that no person shall, in consequence thereof, be discharged from labor or service due, in another state, by the laws thereof. It was so understood throughout the Union. Accordingly, at a very early period, every state, or almost every state, enacted laws regulating the proceedings on the claim of fugitives, in harmony, as was believed, with the constitutional provisions. But after a lapse of fifty years, and after acquiescence during that period by nearly all the states in this system of legislation, it was decided in the case of Prigg *vs.* Pennsylvania, that the restriction of state legislative power was an absolute inhibition of its exercise. With the most profound deference, we submit that the error of that adjudication need not be exposed by argument, but is apparent, and rendered palpable, by bringing the Constitution and the *adjudication* into simple juxtaposition and contrast.

His Honor, Mr. Justice Story, in the case last mentioned, gave an analysis of the constitutional provision, to show, that legislation was contemplated to carry it fully into effect, and to prevent its abuse.* But this process seems to lead, inevitably, to the opposite conclusion. The learned judge assumed, that the delivery of the fugitive slave to the claimant, was the principal object and design of the provision, and all else that it contained was merely incidental. On the contrary, the most cursory reading of the pro-

* 16 Peters, 640.

vision would discover that the restrictions upon the legislative power of the states, or to speak still more accurately, the restraint upon the courts of justice, in cases and proceedings, concerning the claims of fugitives from labor, was the principal object and design, and that the delivery of the fugitive was purely an incident or consequence. The provision refers neither to Congress, nor to state legislatures, directs no action by them, nor designates any possible occasion for their action. Looking over, and beyond them, to the courts of justice, the Constitution brings before us a case, where a person, who has been proved to be held to labor, in one state, is claimed in another, and pleads that the state, in which the trial is held, has made some law, or established some regulation, in consequence of which, he is discharged from his obligation in the state from whence he escaped. In such a case the Constitution commands the court to disallow that plea, and to disregard that statute and regulation so completely, that the fugitive may, by process of execution, or otherwise, be delivered to the claimant. Surely all this would be a simple proceeding. If the Constitution has given no details, it is because no details for such a proceeding were necessary. The framers of the Constitution knew that there could not be such proceedings, unless there were a court, a claimant, a defender, a plea, proof, judgment and execution; and that all these would be essential, in the administration of justice, and would be found existing in the administration of justice, in every state which should come into the confederacy.

The reasoning which has been pursued has brought us, at length, upon the ground on which this court has taken a firm position. The court said in the opinion delivered by Mr. Justice Story, so often cited, in page 613:—

"We have not the slightest hesitation in holding, that under and in virtue of the Constitution, the owner of a slave, is clothed with entire authority, in every state in the Union to seize and recapture his slave, whenever he can do it without any breach of the peace, or any illegal violence. *In this sense, and to this extent, this clause of the Constitution, may be properly said to execute itself, and to require no aid from legislation, state or national.*"

If then the Constitution, *proprio vigore* executes itself, in cases of claim, without legal process; and if in cases of legal process, the Constitution, being the paramount law of the land, and, therefore, conclusively binding upon all courts, state and national, can execute itself through those courts, without legislation, and in despite of such legislation, the law of 1793 is as void as any legislation by the several states would be.

Our adversaries, however, seek to escape from this dilemma, by maintaining that legislative power is necessary, to secure the delivery of the fugitive by legal process. Their case is stated by Judge Story, as follows :—(p. 613.)

"But the clause of the Constitution does not stop here. Many cases must arise, in which, if the remedy of the *owner* were confined to the mere right of seizure and recaption, he would be utterly without any adequate redress. He may not be able to lay hands upon the *slave*. He may not be able to enforce his rights against persons who either secrete or conceal. He may be restricted by local legislation, as to the modes of proof as to his ownership—as to the courts in which he shall sue—and as to the actions which he shall bring. Nay, the local legislation may be utterly inadequate to furnish the appropriate redress, by authorizing no process *in rem*, or no specific mode of *re-possessing* the slave; or the state legislation may be entirely silent on the whole subject; or such as to deny jurisdiction over cases which its own policy or institutions prohibit or discountenance."

We would not be irreverent, but we must submit that this reasoning is fallacious. What right does the Constitution give to any party, as an *owner* of a *slave* as *property?* No such character, and no such property are named, or described, or recognized in this Constitution. In a case of latent ambiguity, we may resort to extraneous helps to construe contracts, compacts, and even constitutions. Volumes have been written to prove that *slavery*, the relations of *master and slave*, and of *owner and slave*, existed in the country when the Constitution was adopted, and that, therefore, this constitutional provision is to be deemed and taken as a recognition of slavery, of those well known relations, and of those anomalous incidents. The more clear the facts thus presented, the more conclusively are we entitled to deny the conclusion insisted upon. For, words are used in making laws and constitutions, to mean what they express, not what they do not express. The framers of the Constitution, who knew all these facts, instead of employing language well known and commonly used, to describe slavery, slaves, and slave-holders, masters and slaves, goods and chattels, and owners and ownership, studiously and carefully excluded them all. Instead of any such terms as would imply an acknowledgment of the law of slavery, and its incidents, they described those who were the subjects of the provision in question, not as *chattels* or *property*, of any kind, but as *persons* and as *men*, and not as persons who were *slaves*, but as persons who were held to labor by *lawful obligations*. Those who were described as claimants, were not *slave-holders*, or *owners*, or even *masters*, but they, like the subjects of their claims, were persons, they were persons who had a lawful title to the services of those whom they

pursued. And the Constitution in every part and portion of it, fastidiously rejects all recognition of slaves and slavery.

We ask then, in the words of Judge Story, how are we to interpret the language of the clause? We borrow from him the reply. "The true answer is, in such a manner as consistently with the words, shall fully and completely effect the whole objects of it." Less than this would render the protection given by the provision, "shadowy and unsubstantial." More would convert it into an engine of oppression and slavery. And now, with what truth can it be said, as this court has said by that opinion, that the provision contains a positive and unqualified recognition of property of the owner in the slave? Mr. Madison, and all others, bear testimony, that the convention, sagaciously, intentionally, and solemnly, refused to recognize slavery, or the right of property in persons, and employed the phraseology so often quoted, for the very purpose of excluding any construction in favor of slavery. How is it, then, that after a lapse of some sixty years, it is now held that the object of the clause was, "to secure to the citizens of the slave-holding states the complete right and title of ownership in their slaves, as property." I humbly ask this court to reconsider the principles thus promulgated, to disclaim a construction that makes the Constitution recognize and sanction slavery, and to restore it to its simplicity as a compact, that one state shall not discharge, by legislation, persons escaping from another state in which they are held to labor. It is vain, or soon will be, for even this court to require us to read the word "slave" for "person held to labor;" the word "property" for "obligation by law;" and the words "slave-holder" and "owner," for "claimant." Let the ancient reading prevail, and all the difficulties which the court have heretofore found will immediately disappear. Then, we shall no longer be told, as in the case of Prigg vs. Pennsylvania, that "the owner would be utterly without any adequate redress, if his remedy were confined to mere seizure and recaption." For nothing but that right is given to the "claimant" by the Constitution, except a declaration that it shall not be impaired by state legislation. Then we shall not be told that "the owner may not be able to lay his hand upon his slave as *his property*." For then there will be no *slave* and *no property* to lay hand upon. There will be a *person claimed* and a *claimant*, as there is a *debtor* and a *creditor*, a *plaintiff* and a *defendant*, in

every civil cause. Then we shall not be told that "the owner may not be able to enforce his rights against persons who either secrete, or conceal, or withhold the *slave*;" for then, there will be no right in favor of an owner, as such, to be enforced against any person who shall secrete, or conceal, or withhold a slave. But there will remain a right of the obligee, to a delivery of his debtor. If he ask more than this, he will be answered: "We leave you to your common law rights, your statutory rights, your rights by the civil law, whatever they may be. Take your debtor. This is all the Constitution gives. Take him, this is all the Constitution yields to one whose debt is founded upon the accident of birth, or of color, and is created by *law*, without the consent of the debtor, and can be discharged only by servitude for life, servitude not merely for life, but reaching over all generations."

Then we shall not be told that "the owner may be restricted by local legislation as to the mode or proofs of his *ownership*," for then there will be a ready answer: "The Constitution does not inhibit local legislation, or regulation concerning the mode of proof of ownership or claim, unless in consequence of such legislation the party claimed would be discharged, and if legislation should work such a consequence it would be void." Then we shall not be told that "the claimant might be restricted as to the courts in which he should sue, and the actions which he should bring." For he would have the same remedies in the same courts, and the same forms of action, enjoyed by the citizens of the state in which his suit should be brought, unless the state authorities should abridge his rights in that respect, so as to effect a discharge of the fugitive; and then those regulations would be void. Then we shall not be told "that the state legislatures might not authorize an execution in *rem* to deliver a *man*—for then the man, no longer a *thing*, would be restored to his constitutional dignity as a *person* or a *man*." Then we should no longer be told, that "the state legislatures might leave the owner to the mere exercise of his right to repossess his slave without damages against the party that might retain or withhold him." For that right is all the Constitution has given, and he is without any claim for damages in any case; or if he should have a claim for damages, it would arise by operation of the common law, or of the civil law, or of whichever might be of force in any state, and any local statute law or regulation which should deprive the plaintiff of it, would

be absolutely void, because it would discharge the party claimed from his lawful obligations.

Secondly. *Even though the provision, concerning the surrender of fugitives from labor, be ineffectual, and though Congress have the power to give it effect by legislation, the act of* 1793 *is void, because it transcends the legislative power of Congress.*

The power is co-extensive with the *legitimate scope and design* of the constitutional provision. Neither the legislature, nor the courts, can enlarge or alter it. By a reference to the clause, it will be seen, that under even the construction claimed by our adversary, two objects are assigned—two ends are to be effected—*first*, to avoid any legislation or regulation by the states, in consequence of which, a fugitive from labor might be discharged therefrom; *secondly*, to provide that such a fugitive should, upon claim, be delivered to the party to whom his services should be due. The act of 1793, implies a confession by Congress, that no legislation as to the first object was necessary: for it contains none. The act purports to attain the second object by several provisions. The *third* section authorizes the person to whom labor or service may be due, to *seize* or *arrest* the fugitive, and take him or her before the judge of any District or Circuit Court of the United States, in the vicinage, and upon proof to the satisfaction of the judge or magistrate, either by oral evidence or affidavit, that the person so seized or arrested, doth, under the laws of the state from which he fled, owe service or labor to the person claiming him, it shall be the duty of the judge or magistrate, to give a certificate thereof to the claimant, his agent, or attorney, which shall be a sufficient warrant for removing the fugitive to the state from which he fled. The *fourth* section provides a penalty against any person who shall knowingly and willingly *obstruct* the claimant in *seizing* or *arresting* the fugitive, or who shall rescue *him*, and also denounces a penalty upon any person who shall *harbor* or *conceal* any person *after notice* that he is such fugitive as aforesaid, and also saves to the claimant his right of action for any such injuries. If this statute be laid by the side of the constitutional provision, it will appear very manifest that the statute exceeds the constitutional power of Congress. First in this: That it authorizes, and for aught that appears, unnecessarily authorizes, a party to be his own bailiff, and to seize his debtor by force in any state without process, without warrant issued upon probable cause, and in viola-

tion of the 4th article of the amendments of the Constitution of the United States. That article declares as follows :—

"The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable searches* and *seizures*, shall not be violated; and no warrants shall issue, but on probable cause supported by oath or affirmation, and particularly describing the *place* to be searched, and the *persons* or *things* to be *seized*."

The Constitution of the United States was made BY THE PEOPLE of the United States, in the NAME of the PEOPLE, and, however contrary to the fact, it must be deemed to have been made with the implied consent of the *whole people*, as well slaves as freemen. This is so manifestly a true theory, that I need not fortify it by reference to the Declaration of Independence. A slave, being a person, is *one* of the people. It is only as one of the people, that he is held to labor by law, and however he may be denied participation in the contract of labor or in the conduct of the government to which he is subjected, he is still a member of the great corporation aggregate for whom the Constitution was made, and is maintained. In his lowest estate—in his most abject servitude, he has *some* legal rights. He may not be slain, or even assailed, without a cause, and though he may be forbidden to claim a remedy, society claims and enforces it for him. Let it be marked that this *fourth* article does not limit the rights which it guarantees to citizens only ; but extends them to the *people*, and of course to every one of the people. If it be maintained that a slave is not entitled to the benefit of this article, in the state where he is bound to labor, we answer that "he becomes *ex vi termini* one of the people of any other state which he enters, and then acquires a right to the protection of this article, modified only by the provision which forbids his discharge in consequence of the laws of that state."

Every doubt of the right of the alleged fugitive slave, to the protection of this 4th article, will be removed, by collating it with the 3d clause of the 2d section of the 4th article of the Constitution. Those who are described in both, are described as *persons* and not *as slaves*.

The law of 1793 invades the rights of *personal liberty* secured by the 5th article of the amendments to the Constitution, which declares that "no person shall be deprived of life, liberty, or property, *without due process of law*." Due process of law, is a writ or warrant issued by a magistrate, upon probable cause, supported by oath or affirmation, describing the person to be seized.

Again. The law of 1793 invades the 7th article of the amendments. The right of recaption has been declared by this court to be a *common law* right, and clearly it is not one to be tried in a court of Equity, or of Admiralty. It is, therefore, a right to be tried by a court proceeding, according to the course of the common law, and yet the law of 1793, denies to the person arrested, the privilege of trial by jury.

Again. The act of 1793 is unconstitutional, and void, because it authorizes not merely an unreasonable seizure of a party, without due process of law, but directs that a judgment of disfranchisement and perpetual labor, may be rendered against him *in his absence, under duress by the plaintiff*, upon *ex-parte evidence*, without giving him any opportunity to be *heard*, before judgment, or to review the proceedings afterwards, and throughout the contemplated proceeding, denies him the privilege of *bail*. And this is in palpable violation of the eighth article of the amendment, which declares, "That excessive *bail* shall not be required, nor excessive *fines* imposed, nor *cruel* and *unusual punishments* inflicted." Again, the fourth section of the act is unconstitutional, because it subjects the party harboring or concealing a fugitive from labor, to punishment. While the constitutional provision does not at all inhibit a citizen from yielding such hospitality and entertainment, he has a natural right to exercise it by the constitution of every society. There is a luxury in affording "succor, help, and comfort" to the needy and oppressed, and we are commanded to do so by divine laws, paramount to all human authority.

If it be answered that Congress has deemed such a provision necessary, to give effect to the Constitution, we reply :—

First. The framers of the Constitution, with a full view of all the evils to be prevented, confined the remedy to an inhibition of certain local legislation, and to the extradition of fugitives when claimed.

Secondly. Congress has no power to interdict *any duty* enjoined by God on Mount Sinai, or inculcated by his Son, on the Mount of Olives.

In truth, an examination of the statute, and a comparison of its provisions with the cotemporaneous legislation of the slave-holding states, shows that its details were not original, and were not new, but were borrowed from statutes of those states, invented to prevent the escape of slaves. When the "Amendments," which

have been cited, were so strenuously insisted upon by the state of New York, as a condition of accepting the Constitution, the alarms and fears, out of which they arose, were thought by many, groundless, and absurd. It is a melancholy reflection that they have proved inoperative. Still further and stronger guaranties of personal rights will be necessary, if the decision here be adverse to the defendant.

Finally. The act of 1793 is unconstitutional, because, by implication and certain effect, it recognizes slavery as a lawful institution, lawfully creating an obligation to labor. All slavery is an open violation of the personal rights guarantied to the people by the Constitution. However true it may be, that when Congress finds the institution existing in any state, they have no power to disturb it there; it is clear that they have no right to extend it into other states, or compel such states to recognize its peculiar code. Such a power is not expressly conferred by the section which has been considered, nor is it implied by any necessary or reasonable construction. It is manifestly excluded from that portion of the instrument, absolutely interdicted by others which have been recited, and is at war with the spirit of the whole Constitution. We need not refer again, minutely, to its provisions to support this argument. Our senses tell us, our happiness assures us, our pride proclaims, the graves and glory of our ancestors, every day and every hour remind us that we are a Free People; and that the Constitution is a legacy of liberty, and so far as liberty and slavery depend on that great charter, all men are free and equal. If all this be not evidence enough, we can read the same truth in the severe derision we justly excite throughout the world, and the humiliation we cannot conceal, when we attempt to justify the toleration of slavery.

For myself, an humble advocate in a great cause, I cannot hope, I dare not hope, I do not expect, that principles which seem to me so reasonable, so just and truthful, can all at once gain immediate establishment in this tribunal, against the force of many precedents and the weight of many honored names. But I do humbly hope that past adjudications, by which the Constitution was unnecessarily declared to recognize, sanction, and guaranty slavery, may be reconsidered. I appeal to the court to restore to that revered instrument, its simplicity, its truthfulness, its harmony with the Declaration of Independence—its studied denial of a right of

property in man, and its jealous regard for the security of the people. I humbly supplicate, that slavery, with its odious form and revolting features, and its dreadful pretensions for the present and for the future, may not receive in this great tribunal, now, sanction and countenance, denied to it by a convention of the American states more than half a century ago. Let the spirit which prevailed in that august assembly, only find utterance here, and the time will come somewhat more speedily, when throughout this great empire, erected on the foundation of the rights of man, no court of justice will be required to enforce INVOLUNTARY obligations of LABOR, and uphold the indefensible law of PHYSICAL FORCE.

INVENTION.*

May it please the Court, Gentlemen of the Jury,

The learned counsel who opened this case to you on the part of the defendants, began his argument by endeavoring to excite in your mind a prejudice against the system of the patent laws of your country, and he fortified his argument by calling the system one of monopoly. He pointed out no abuses which have ever existed in this country, but he spoke of abuses which occurred in England. It is true that at one time, in England, the system of monopolies had become oppressive and odious. This arose from no defect in the system, but was produced by the government itself. There was a time when all legislative and executive powers were united in a king. He abused the principle on which the system of the patent laws is founded, and he carried these abuses to the extent defined by the counsel. A Queen of England interdicted the manufacture of playing-cards, in order that she might grant the monopoly to a favorite, assigning as a reason, that her other subjects might be better employed. The patent for the colony of New York was granted by the king to his brother, on this principle. But the idea on which the system of our patent laws is founded, is, by those abuses of it, only proved to be the more true, wise and just. In the time of James I., when the legislature recovered its power, it declared the whole system of monopoly and its abuses to be contrary to the interests of society. Then the common law took up this principle, and established it in a system of patent laws, sound, wise and beneficent, and within the restraints then placed around it, it has continued until this day, under the administration of it by learned courts, until that nation which leads the march of the world in wealth, prosperity, and military power and renown, owes its position to nothing more than to this condemned principle.

* Argument on Invention—Many *vs.* Treadwell—Albany, Oct. 17, 1848.

What is that principle? Simply that it is the duty of the government to be a praise unto them that do well, and a terror to evil doers. Why is it important that the government should be a praise unto them that do well? It is not because by rewarding those that do well it promotes their welfare, but because it thereby exercises a protecting power over all the interests of society. And what is this, for which the government praises those that do well? It is the principle of invention. And what is that? There are two great principles of activity, in regard to the world. One is creation, the other is invention. Creation is the peculiar attribute of Him who made all worlds, all that is on the earth, in the earth, and in the waters under the earth, for the greatness and the welfare and the happiness of our race. He created nothing that is not adapted, fit, and useful in some way to promote our health, welfare, prosperity and happiness. He made it all, in the counsels of his own will. He spoke it into existence by a word, but he concealed it from his creatures, and made it *their* greatest glory to find out the purposes, principles, and adaptations of the things by which he surrounded them. Our duty consists in finding them out, and invention is nothing more than finding out what will promote the progress of society, through all time. He has hidden and concealed nothing so deeply that we cannot find out, as fast as is best for our welfare and consistent with his Providence, the uses and purposes of every thing. Invention, then, is worthy of the fostering care of every government. What would society be now, but for the exercise of invention in times past? Where lies our hope of progress in society, but in the exercise of invention for the future? Hope is, in this respect, the spring of youth to mankind and to nations. And in the exercise of invention, the world is renewing itself, and becoming wiser and better, as it approaches those latter days, when our species will have attained a comparative degree of perfection and exaltation.

Wherein consisted the advantage of the Spaniard over the Peruvian and the Mexican, when he subverted the empires of America? It was in this, that the invader had invented the power which resides in the combination of sulphur, saltpetre and charcoal. Wherein our superiority over the enemy, whom we have recently defeated in the centre of this continent, but that we have rewarded invention? Look, too, at the dignity of this principle of invention. It stands in contrast with the power of the

Almighty. He creates instantly; man finds out slowly, progressively, laboriously. When you reflect, you will see that there is danger of misapprehension. You have been imagining that somebody made, or created, a railroad wheel. But no human being creates. God alone creates. It is our province, worthy of the patronage of government, and the highest exercise of human power, to follow the clues which lead us to his designs, with regard to matter, for our happiness and welfare. And what is there wrong in this system? Society says to all alike, that if they will devote talent to the discovery of any thing which will contribute to the welfare of society, they shall have the first enjoyment of it for fourteen years, on condition that they will then publish it for the benefit of the world at large, for this and future generations. If, then, there is an honest thought in your hearts, do not your cheeks blush with shame, not because your country has conferred this benefit, here and there, on a struggling inventor, but because you are filled with virtuous indignation, that Fulton sleeps in his grave, while his family are mendicants, and while the production he gave to the world has become the engine of your commerce, the great uniting power that binds your confederacy together, and is revolutionizing the East, bringing Africa and Asia into the great fold of the family of civilized man? It is a burning reproach, that he who made the lightning your messenger, and bids it carry for you messages of love, and grief, and joy, and triumph, and trouble, is standing here this day, in this court, a suppliant to the laws of the land, to protect him for fourteen years in the enjoyment of that instrument, the effects of which, to benefit mankind, cannot be bounded by time, and will be felt when time shall have ceased to exist.

Where, then, is the monopoly? In what? Why, it is said, that although the patentee may sell for fourteen years, still he may refuse to sell; and he is compared to the dog in the manger. How can a man have a right to sell, unless he has a right to name his price? Still it is said, no other man may compete with him. But I can realize nothing from a patent, unless I sell, and the more I sell, the greater my profits. Where is the unreasonableness of this? No invention was ever brought to perfection, without the expenditure of money and labor. Truscott & Dougherty, the inventors of this wheel, were poor, laboring men. The first thing they did, was to bring in a third person, to furnish the small

amount of money, that was necessary to convert an old spoke-wheel pattern into this wheel. Woodworth's planing machine costs now some three or four hundred dollars, yet Woodworth was obliged, before he could begin to build his machine, to sell the half of his invention to the man who furnished the capital.

The human race is yet enthralled in ignorance, and to a great degree in poverty, and suffering. Society is to be disenthralled by finding out the properties which God has conferred on matter.

If the merit of invention is so great, it must be a pleasing gratification to him who organized the system on which human society is established, when he sees one of his creatures so employed. And there must have been a beneficent smile from on high, lighting up a halo around the head of Fulton, when he invented a steamboat. No less beneficent must have been the smile when these poor and humble citizens produced an invention which would save the loss of human life on railroads. You are the interpreters of the Omniscient Eye in regard to the aptitude of iron for the purpose which we have been discussing. You must perform your duty under the belief that He sees your hearts, and tries your reins, and that whatever judgment is meted by you, shall be meted to you again. For there is an all-seeing Eye, that renders to us even in this life, the reward we merit for doing justly.

But the atrocious assault that has been made on the policy of your country has a mitigation pleaded for it. It is said that the true inventors, Truscott, Wolf and Dougherty, might be entitled to recover, but that this action is brought by a speculator, who has no business but to prevent people from making railroad wheels. This apology is as atrocious as the other offence. The patentees made these wheels for four years, struggling all the while against the power and wealth of railroad companies, and the capital of such men as Baldwin & Tiers. They put in use a thousand of them. Then Bush & Lobdell, of Wilmington, commenced making wheels in defiance of this patent, and on its principle, because the patentees had no pecuniary ability to defend themselves. Then, Eddy of Waterford, commenced making the Wolf wheel; and then the Sizers and Kinsley covered the whole of New England with them. It is no wonder, then, that they discontinued the manufacture. All wheels that can be used on railroads, and are not spoke wheels, are Wolf wheels. There is not a double plate car wheel, or a hollow car wheel in America, that is not made

under license from this plaintiff, or is not the subject of prosecution existing, or to exist.

The learned counsel for the defendants says, that it is doubtful whether the plaintiff ever paid any thing for his patent, and that his instrument of purchase recites the consideration of six thousand dollars, after nine years of the patent had gone by. But since you are asked to believe suspicions on the one side, I appeal to you to believe me when I say to you, that I saw and know, that that whole sum was paid, and paid absolutely and in good faith. Yet here stand the defendants, asking you to defraud this man. He has stepped forward and rewarded the inventors, and stands in their place. Let the defendants show that they have paid him, as he has paid the inventors, and they may plead that a monopoly is oppressive.

One of the learned counsel for the defendants, invited you to notice the superior excellence, on their part, in conducting this cause. When you perceive the fragrance, you may be sure the rose is near. When you see a modest man, you may expect to see his merit unfold. You have had an instance of frankness in the miserable design, of holding back that iron wheel, until the very last, and then rolling it in as a wheel cast according to pattern B. You had another instance of frankness and magnanimity, when, after the learned counsel for the defendants, who has just preceded me, had interrupted my associate when he was arguing that the Tiers wheel had never been cast, and was not like our wheel, by saying that the defendants claimed nothing in that respect, and that argument upon it was unnecessary, and then, when my associate had desisted, that same counsel arose, and standing here, perverted the testimony of Tiers in the most extravagant and unwarrantable manner. And when to all this is added the high-mindedness of denouncing our system of patent laws as a monopoly, we cannot be expected to humble ourselves before the superiority of our opponents.

I ask you, gentlemen, to believe me when I say, that you are capable of learning something new, in regard to the exercise of this faculty of invention. It is not like creation, an instantaneous and a perfect thing; but it is a progressive and an imperfect thing. Invention, is finding out in the dark. It is groping in a cavern, stored with all things adapted for our purposes. The steam engine was conceived one hundred years before it floated on the water, or traversed the land. It was described in 1783, an engine

as complete as it could be. But the Hudson received, long after that, the first burden of a boat floated by steam. I have seen in a distant land, a monument to the man who perfected the steam engine so that it produced motion. And what was the achievement of Fulton? It was that when the steam engine had been perfected, he stumbled upon the manner of applying it to move a boat. When was the Magnetic Telegraph discovered? The germ of it was brought to light by Franklin, when he brought down electricity from the clouds by means of a kite. Yet that was seventy years ago. And it was only within a few years that the manner of applying that principle has been discovered. A cause precedes an effect. One thing always precedes or produces another. The carriage wheel produced the first railroad wheel—of course it was a spoke wheel. The inventor gropes in a cavern, holding on to a chain that is suspended to the throne of God, who permits him to grasp but a single link at a time. There must be the boll of rotting flax, before there can be the bridal veil. There must be the egg before the eagle, the thought before the thing.

> "We learn upon a hint, we find upon a clue,
> From the basket and acanthus is modeled the graceful capital
> The shadowed profile on the wall helpeth the limner to his likeness;
> The foot-marks stamped on the clay, lead on the thoughts to printing;
> The strange skin garments cast upon the shore, suggest another hemisphere;
> A falling apple taught the sage prevailing gravitation;
> The Huron is certain of his prey from tracks upon the grass,
> And shrewdness, guessing on the hint, followeth the trail;
> But the hint must be given, the trail must be there, or the keenest sight is as blindness."

The invention of anything is divisible, like any human fabric or structure. It has a beginning, a middle, and an end. One man may begin an invention. From a footstep in the sand he may conceive the idea of printing. But he dies, and the thought perishes with him. Is he an inventor? Another man takes the hint from him and grasps another link in the chain. You may engrave on a seal the letters of your name and stamp them on wax. That was done long before the invention of printing. But was the invention of printing thereby complete? So far from it, that Faust, who engraved letters on type, and employed a machine to stamp impressions of them on paper, so astounded the world, that it was charged and believed that he was assisted by the devil.

Since, then, invention is divisible, it is important to determine what is the act of invention. Is it the beginning, the middle, or

the end? Is the inventor he who takes the first step, he who stops at the second, or he who completes the invention? All cannot have the reward, though all may be meritorious. The invention is the end, not the beginning. "*Finis coronat opus*," is a maxim of sound philosophy, that has come down to us through a thousand generations. The law praises and approves the end, and rewards the final inventor. And for this there is a reason, founded in immutable justice, because he alone is a benefactor. He who thought of the invention was a well-wisher to his race. He who desisted and left it unfinished was unfortunate or unworthy. But till it was perfect and practical, the invention was of no value. The final inventor is the benefactor, and for him the odious monopoly was created.

What other rule could there be? The thought may perish and has often perished. Men have died victims to their zeal, in grasping to reach the last link in the chain, which offered itself by accident to him who came after. But he was successful, and he alone became entitled to the reward. All who preceded him, though deserving, merited only praise.

This is no speculation. There is a rule of law founded in this principle. He who commences an experiment, but only experiments, and produces an imperfect thing, and abandons it because it is unsuccessful, is adjudged not to be the inventor.

The abandonment of a mode raises a strong presumption, either that it failed or was merely an experiment.

If an alleged invention be not pursued, the presumption is that it was not made in a useful form.

The abandonment is an important question for determining whether what took place was experimental, or a perfected and complete invention.

Mere experiment, though successful, is, if abandoned, no ground for a claim to invention. The plaintiff's wheel may have been made before his patentees made it. But if the making of it was abandoned, then there was only experiment, which avails nothing. If those who made it before did not know that they had been successful, the reward belongs to the more fortunate and more persevering inventor.

DEFENCE OF ABEL F. FITCH, AND OTHERS.*

Introductory Note.—In May, 1851, an announcement was made by the press of Detroit, that an atrocious conspiracy (embracing fifty citizens of Jackson county, in the state of Michigan,) for the destruction of the property of the Michigan Central Rail Road Company, and an indiscriminate war against the lives of passengers travelling on the road, had been discovered, through the activity of agents of that company, and of the police, and that the guilty parties had been suddenly surprised, arrested, and conveyed to jail in Detroit.

The accusation took the form of an indictment for arson, in burning the depot of that company at Detroit, and the proof that of a conspiracy, for the commission of that and other great crimes. The prisoners alleged their entire innocence, and declared that the prosecution was itself a conspiracy, to convict them, by fabricated testimony, of a crime that had not even been committed.

The accused parties denied combination with each other, and even all knowledge of the principal, who was alleged to have committed the crime, and who, as they supposed, had been fraudulently induced to confess it and charge them as accomplices. In applying to be admitted to bail, the sums were fixed so high as to practically deny them that privilege.

Public opinion was vehemently and intensely excited against them, by reason of aggressions, that had been committed in their neighborhood for a long time, seriously endangering the lives of passengers. Among the accused were persons in every walk of life, and while the guilt of some seemed too probable, that of all appeared to be quite impossible. The ten most distinguished lawyers of Michigan, were retained, before the arrest, by the Rail Road Company, to conduct the prosecution, and it was said that every other counsellor in the city and state qualified to defend them, except one, had been induced to decline to appear in their behalf.

They applied to Mr. Seward, at Auburn, by telegraph, after the trial had begun, stating these facts.

He did not hesitate to appear for men whom the public had prejudged and condemned, and whom the legal profession, except for his going to their aid, would have been deemed to have abandoned.

The issues were perplexed. The evidence was of a most extraordinary character. Even now, it is impossible on reading it, to decide which was most improbable, the existence of the crime, or the truth of the defence. The trial lasted four months, and so was the longest, in a jury case, that was ever held. The alleged principal died before the trial began.

One of the chief defendants, and another more obscure, died during its progress

* Detroit, Michigan, September, 1851.

Twelve of the fifty defendants were convicted, and all the others acquitted. All these circumstances, together with the ability and learning displayed, mark the case as one of the great state trials of this country. Mr. Seward's Argument was published at the time; it reviewed, collated and condensed the testimony of four hundred witnesses, presenting a very complicated series of transactions, private and public.

This speech fills more than one hundred pages in the report of the trial. To that report we refer the reader, regretting that our limits allow us to present only the introduction and the close of so elaborate and interesting a speech.—Ed.

May it please the Court—Gentlemen of the Jury:

This is Detroit, the commercial metropolis of Michigan. It is a prosperous and beautiful city, and is worthy of your pride. I have enjoyed its hospitalities liberal and long. May it stand and grow and flourish forever. Seventy miles westward, toward the centre of the Peninsula, in the county of Jackson, is Leoni, a rural district, containing two new and obscure villages, Leoni and Michigan Centre. Here, in this dock, are the chief members of that community. Either they have committed a great crime against this Capital, or there is here a conspiracy of infamous persons seeking to effect their ruin, by the machinery of the law. A state that allows great criminals to go unpunished, or great conspiracies to prevail, can enjoy neither peace, security, nor respect. This trial occurs in the spring-time of the state. It involves so many private and public interests, develops transactions so singular, and is attended by incidents so touching, that it will probably be regarded not only as an important judicial event in the history of Michigan, but also as entitled to a place among the extraordinary state trials of our country and of our times.

Forty and more citizens of this state were accused of a felony, and demanded, what its constitution assured them, a trial by jury. An advocate was indispensable in such a trial. They required me to assume that office, on the ground of necessity. I was an advocate by profession. For me the law had postponed the question of their guilt or innocence. Can any one furnish me with what would have been a sufficient excuse for refusing their demand? *Hoc maxime officii est, ut quisquam maxime opus indigeat, ita ei potissimum opitulari,** was the instruction given by Cicero. Can the American lawyer find a better rule of conduct, or one derived from higher authority?

A word, gentlemen, on the origin and progress of this

* The clear point of duty is, to assist most readily those who most need assistance.

controversy—not to excuse the defendants nor to arraign the state.

Fifteen years ago, Michigan attempted to stretch a railroad across the peninsula, from shore to shore. It was honorable even to fail in so noble a design. An imperfect road was built, reaching from Detroit to Kalamazoo, and was travelled by a few slothful engines. The state conducted it, as the state conducts every thing, with conciliation and kindness toward the people. Necessity obliged the state to give the enterprise over to a corporation, which speedily extended the road to the western waters, and brought it into a perfect condition. Engines increased equally in numbers and in speed, and the road became a thoroughfare alike useful and important to the citizens of Michigan and to the whole country. This public gain was attended by the usual conflict between the corporation and citizens, about routes, titles, prices, stations and property unavoidably taken, injured or destroyed. The regions through which it passed were newly opened. Their inhabitants were *settlers*, and settlers are generally poor. Their farms were not fenced. Public roads, as well as public lands, were habitually used as ranges for pasturage. Cattle, often the settler's only convertible property, were frequently destroyed. The change was sudden and abrupt. The corporation refused to pay damages; the settler insisted on them. Litigation ensued, and failed to settle the contested claim. The corporation offered half price, as a compromise. The settler regarded this as a concession of the right and insisted on the whole. Jealousy of wealth and power inflamed the controversy. Occasionally a settler retaliated, and ultimately several united in committing trespasses. The corporation invoked the legal tribunals, but failed for want of evidence. The controversy became embittered, chiefly in Jackson county. On the night of the 19th of November last, the freight depot at Detroit took fire and was reduced to ashes. No one dreamed, or ever would have dreamed of an incendiary, had not a public outcast, lured by the tempting rewards of the corporation, conceived the thought of enriching himself by charging the crime committed here upon persons in Jackson county, obnoxious for trespasses committed there. He secretly gave body and form to that suspicion, and on the 19th of April last, it resulted in the alleged disclosure of a long concerted, profoundly contrived, and deliberately

executed conspiracy by citizens of Leoni for the entire demolition of the rails and structures of the Michigan Central Railroad.

Thus it is seen that the state, by neglecting to provide for the consequences of the sudden change of its policy, caused its citizens "to stumble in their ways from the ancient paths, to walk in paths in a way not cast up."

There has been a wild and fearful conflict. On one side, unbridled, licentious speech, retaliation of private wrongs upon the body politic, by reprisals, reckless of condition, sex or age, and of distinction between the offending and the guiltless; on the other, a corporate police of mercenary spies, pursuing and haunting the steps of all who were exposed to their suspicion or their malice. Secret accusations were laboriously compiled by scribes and verified by oaths before magistrates, with the carefully studied and profoundly concealed purpose of obtaining, in some way, evidence enough to sustain an accusation against citizens of Leoni of some crime or crimes for which they could be tried away from Jackson county.

When all was matured, an indictment was speedily found against Abel F. Fitch and others, for burning the depot at Detroit; another for conspiracy to burn the new depot which had arisen in its place; another for burning the depot at Niles; another for conspiring to burn the depot at Marshall; another in the United States Court, for manufacturing and passing counterfeit money; and still another for burning the public mails. Civil actions were simultaneously brought against the defendants. Bail in frightful sums, was exacted in each of these actions and on every one of these indictments. Able and sympathising friends were ready to become bound; but the wealth of Jackson county could not meet the large demand, and the defendants, ever since, have been held fast as in a cage of iron. The corporation employed ten lawyers among the most eminent within the state, and assuming the direction of the prosecution and defraying a large portion of its expense, has poured forth, through the lips of its witnesses, the compiled volume of secretly gathered accusations. The prisoners have come daily into court to encounter these accusations, and have returned at night to confront pestilential disease in the jail. The press of Michigan received the disclosures as true, and proclaimed them to the world. The press throughout the whole country, accepting the disclosures, responded in expres-

sions of horror to what it regarded as evidence of a universal demoralization in Michigan, and demanded immediate punishment of the accused, with a restoration of the earlier and more rigorous penal code of the state.

Meanwhile, death, by removing the lowest and the highest of the alleged offenders, has invested the transaction with the solemnity of tragedy. Reaction has come, and with it, division of opinion and of sympathy. It is a strife between a corporation and the city of Detroit on the one side, and the county of Jackson on the other. The question is vehemently discussed, whether Abel F. Fitch died a felon or a victim of cruel oppression. Opposition to the corporation, on whatever grounds, confining itself within legal limits, of course gains strength by moderation. Corporate wealth cannot long oppress the citizen in such a country and under such a government as this. Your verdict against these defendants, if it should appear to be well grounded upon the evidence, should abate a rapidly rising popular commotion; but, if it should not be so sustained by the evidence, a people who make the wrongs of each one the common cause of all, will pick strong matter of wrath out of the bloody finger's ends of a successful conspiracy. You have discrimination, candor and courage. You have need to exercise them all. You cannot escape present censure, whether you find the defendants guilty or innocent. But if your verdict be a truthful one, it will receive its vindication in history.

[Here Mr. Seward reviewed at length the evidence on the alleged conspiracy.]

The railroad company, unable to convince the farmers of Jackson county that half price was enough for cattle destroyed, and unable to arrest the depredations which were committed by way of reprisal, resorted to a system of espionage. On the 10th of August, 1849, they offered a reward of $500 for proof sufficient to convict any one person of any one unlawful overt act, past, present or to come. I am not complaining of this. It becomes necessary to expose this system before you, for the purpose of testing the value of the evidence which has been procured by it. The railroad company employed a corps of spies to watch and to circumvent suspected citizens, paying them compensation, varying from seven shillings and $2 per day or night, to $40 per month. How large that corps was is unknown. But it numbered one

hundred at one time, and no less than fifteen of its members have appeared here as witnesses to sustain this prosecution. * * *

Let me not be misunderstood. Not only do I rejoice that no human life has been lost, nor limb broken, but I condemn these outrages as atrocious, cruel and inhuman. Their only alleviation is that they proceeded from passion; and passion, dark and stumbling, in individual men, is blinder still in masses, where a sense of individual responsibility is lost. But that constitutes no justification. I sympathise in no hostility to the Michigan Central Railroad—in no hostility to corporations—in no hostility to wealth. I rejoice in the completion of every new link in that chain of internal communication, upon which I rely to bind together the ever changing boundaries of this vast empire. I would indeed hold corporations, as I would private citizens, to the practice of justice and moderation; but I know of no legitimate redress, in a government of laws, but redress by law, and by constitutional change of laws. I regret that these aggressions remain unpunished. I trust they will yet be punished, and that the majesty of the law will yet receive its ample vindication. * * *

A corporation, enjoying a monopoly of carrying the person and property of citizens over a great national highway, and deriving from it an income exceeding by three-fold the revenues of the state, has become, in this season of alarm, a power behind the state, greater than the state itself; and now we see the wisdom of a saying of the son of Sirach, himself a sovereign. Beyond a doubt his own court was infested by a nest of caterpillars like these, when he admonished the unwary: "Curse not the king; no, not in thy thought; and curse not the rich, even in thy bedchamber; for a bird of the air shall carry thy voice, and that which hath wings shall tell of the matter."

Regarding the witnesses produced in this case as mere spies and informers, unconvicted of crime, uncontradicted and unimpeached, what is their moral standard in a virtuous commonwealth? Hear what Addison said, for he was not only a moralist but a Secretary of State, "A man who is capable of so infamous a calling as that of a spy is not very much to be relied upon. He can have no great ties of honor or checks of conscience to restrain him in those *covert* evidences, where the accused has no opportunity of vindicating himself. He will be more industrious to carry that which is *grateful* than that which is *true*. There will be no occa-

sion for him, if he do not hear and see things worth discovering; so that he naturally inflames every word and every circumstance, aggravates what is faulty, perverts what is good, and misrepresents what is indifferent. Nor is it to be doubted that such ignominious wretches let their *private passions into these their clandestine informations*, and often wreak their particular spite and malice against those they are set to watch." If this is wise morality, (and it has been universally received,) and if there is sound philosophy in the old Spanish proverb, "bad the crow, bad the egg," we shall be at no loss to appreciate the evidence before us. It is a mountain of falsehood, with here and there a grain of truth. When I look upon the men who occupy the place on my right hand, and recognize among them pioneers of the state, its farmers, its mechanics, and its citizens; and then on this legion of spies, and find there on the witness-stand convicts yet wearing the look and the gait contracted in the State Prison, and see others come reeking from the stews of the city; I ask myself, can it be real? Does honesty dwell in the penitentiary, and crime stalk abroad over the state? Is the city pure, and the country polluted? Has truth fled from the hearth of the farmer in the country, and taken shelter in the purlieus of the metropolis? No! I am not in Michigan. I am in Venice, where an aristocratic senate keeps always open the lion's mouth, as well by day as by night, gaping for accusations against the plebeian and the patriot. I am in Syracuse, and see before me the dungeon which the tyrant has erected, with cells in which he has imprisoned those he fears, and with walls constructed on the model of the human ear, so that its curious channels convey to him even suppressed groans, and sighs, and whispered complaints.

But first, where is the truth of these accusations to be tried? They are accusations of local offences which ought of right to be tried at home where the accused parties live, by a jury of that vicinage, and not elsewhere nor by a jury of strangers. The accused ought to be at large on bail, to procure the evidence to confront the calumniators; and yet they have been dragged seventy miles from their homes, out of their own county of Jackson, through the intervening county of Washtenaw, and have been put on trial for local offences, here before a foreign court, by a jury of strangers, in a community which, in judgment of law, is to them a community of aliens and enemies. Nay more, when

sickness has befallen a juror, and when disease has prostrated a defendant in his cell, the prosecution have complained of the cost of delay, and have vehemently reproached the prisoners, because they would not surrender almost the only constitutional rights left them of being tried by twelve jurors and by no less, and of being present in person during their trial. But I mistake. This is not the act of citizens of Detroit, for they are a humane people. It is not the act of Michigan, for it is a just and benignant commonwealth. It is not the act even of the Michigan Central Railroad Company. It is the act of agents of that corporation, who have dared to misuse their powers and to assume the police authority of the state. I know, and I feel well assured that the acquittal of these defendants will be received with satisfaction by the citizens of the metropolis, and will be approved even by the corporation itself; while it will go abroad with healing on its wings for public discontents pervading the state.

[Mr. Seward reviews the character of the principal (Abel F. Fitch) among the accused, and also the chief witnesses against him, in the following passages :]

Who believes Abel F. Fitch to have been insane? No one. Who believes that a sane, educated man, living in such a country as this, could conceive a purpose so atrocious, or that, conceiving it, he would impart it to another? Abel F. Fitch was a man of education, position and fortune—in all these respects surpassed by few in Michigan. He was a public officer, respected and honored at home, with troops of friends bound to him by clasps of steel, in various parts of the state. Is there no truth in the ancient maxim: "*Nemo repente fuit turpissimus!*"* Is there any height of crime towering above what is here alleged to have been reconnoitered? Four months ago Abel F. Fitch came here an object of public fear and hatred, borne down by the scorn of his country, and of mankind. He went in and out before you. You saw him every day harassed, insulted, reviled, by such testimony as this—you saw him meek, gentle, confiding, cheerful, and enduring. You know his death.† It was peaceful, tranquil, —the death of a man loving all good things on earth, yet resigning them cheerfully in hopes of better things in heaven.

* "No man reaches the heights of crime at once."

† He died in prison during the trial.

Who was George W. Gay?* A man of fifty years or upwards, who had been convicted of more than twenty crimes, ranging from petit larceny to murder, who had been more than once a tenant of state prisons in several states, a man who lived in daily association with culprits, and who at the time kept a house of ill-fame, and thus subsisted by the debasement of one sex, while he harbored the most depraved of the other. He eagerly accepted Phelps' proposition to burn the new depot in Detroit, and to charge the commission of the crime upon his recreant associate Boyce, and to suborn witnesses to fasten it upon him, and thereby procure the discharge of Van Sickle, while he would at the same time secure, as he alleged, a double reward of two hundred dollors from supposed enemies of the railroad company for burning the depot, and one thousand dollars from the railroad company, for false information concerning the incendiary. Need I say more to show that Gay's character was so infamous as to deprive his unsworn, *uncorroborated* testimony of all claims to credit?

Henry Phelps was convicted, and underwent nearly in its whole extent, the penalty of the crime of stealing horses. He says he was unjustly convicted. That was his plea when on trial, but it was proved to be false.

Heman Lake was convicted of aiding a thief in his escape from prison, and suffered the full penalty of the law. Counsel deny that the crime of which he was thus convicted has rendered him infamous. The distinction is a technical one, not worthy of an argument. Larceny is an infamous crime. He who assists a thief to escape from punishment was probably himself an accomplice in the crime of the thief, at least he must be moved by sympathies as immoral and criminal as the act of larceny itself. Thus these two witnesses stand before you as men convicted of infamous crimes; men, "the credit of whose oaths, although it should be without any contradiction or impeachment, is overbalanced by the stain of their iniquity."

It is certainly a work of supererogation to prove that a person convicted of an infamous crime is esteemed in the community in which he lives unworthy of credit, for that is only to prove, in an individual case, the soundness of the legal maxim, "that infamous crimes indicate a mind insensible to the obligations of an oath." I think this is the first case in which the prejudiced state

* Gay's confessions were proved by Phelps and Lake, the chief witnesses of the prosecution.

of the public mind has required, that a witness who had been thus convicted, should be impeached by his general bad reputation in regard to truth and veracity. That proceeding has been adopted in this case in regard to Phelps. But who is Henry Phelps? He is the prosecutor on whose naked oath fifty citizens were arrested, and upon whose oath, chiefly, if not altogether, the indictment in this case was found. Upon his oath, sustained by his confederate Lake, this prosecution is suspended. He was born in Bloomfield, Ontario County, N. Y., in 1841, a son of respectable parents, who lived in easy circumstances. He removed with them to Wheatland, Monroe County, during his childhood. He received an education, which, although not a liberal one, surpassed what was ordinarily obtained in country schools and academies, and which qualified a vigorous and shrewd mind sufficiently for any kind of business, in any department of private or of public life. He came to Michigan with his parents, and settled in Highland, Oakland County, in 1835. He pursued no regular occupation there, but was forward and active. He conducted litigation in justices' courts, and was at that time called, (according to the testimony of one of his friends,) "a fine fellow." He was elected town clerk, and commissioned as captain in the dragoons of the militia. But nothing that he began was ever finished, nothing that he planted ever ripened. Political preferment ceased, when rumors of falsehoods and frauds gained circulation. The dragoons who enlisted under his command never equipped, and they were ultimately disbanded. After five years thus spent, he went to Michigan Centre, where Abel F. Fitch resided, and there Phelps bought a distillery and its stock, with drafts on a person in New York, who could never be found. After six months the distillery reverted, with losses, (never yet reimbursed,) to its former owner, and Phelps immediately thereafter became a merchant at Milford, near Highland, his former residence. A month or six weeks passed away, and the stock of goods was suddenly and mysteriously surrendered to the merchants at Buffalo, from whom it had been purchased, and Phelps resumed his business as an advocate in justices' courts. He married about this time, and the counsel who defend him here say he has children. His affidavits were questioned, his arts in conducting trials suspected, his reputation waned, and after three or four years he was convicted of the infamous crime which has been mentioned. He was subject to

occasional epileptic convulsions. He feigned them during his trial, and affected sickness to avoid judgment, but without success. He feigned illness to excuse himself from labor in the prison. Suspected and closely watched there, he failed to propitiate the police until the sixth month in the fifth year of his term had elapsed, and then he was pardoned. On coming out of prison he gathered his family in his ancient home; but habits of regular industry and domestic occupation disgusted him. He invited his associate Lake, who had just been discharged from prison, to join him, but at first without success. After the lapse of about a year, he hired himself to the District Attorney of the United States, in the occupation of what is called a *stool pigeon*, that is, one who for hire joins and leads villains in crime to betray them to justice; or, as it was described by the counsel for the prosecution, the business of "a rogue set to catch rogues." While in that capacity, he renewed the acquaintance which before his imprisonment he had maintained with Gay, and in the very first interview opened to him the plot, if he is to be believed, to screen a culprit from punishment, by a false charge of the crime of burning a depot, upon an unoffending person. Having drawn Gay into that scheme, he offered himself to the railroad company to be enrolled, and was accepted, at a regular salary of forty dollars a month, as a member of their band of spies and informers. His engagement was to furnish sufficient evidence to bring Abel F. Fitch and his supposed associates to trial, for some felony against the railroad, out of Jackson County. He is cunning, plausible, bold and persevering. There he sits. Men imagine that they see his history written in his form and features. They say that he looks lean and malicious,

> "hollow as a ghost,
> As dim and meagre as an ague's fits."

They say, (superstitiously, perhaps,) that

> "So he'll die,
> And rising so again,
> His mother, when she shall meet him in the court of Heaven,
> She shall not know him."

He is impeached by one hundred and twenty-one witnesses, all of whom say his reputation for truth and veracity is bad, many say very bad, all say it is so bad they would not give him credit on oath. He has lived in Sylvan, since he came out of prison. Syl-

van, Grass Lake and Sharon are contiguous. These three towns send one hundred and eleven of the witnesses. Twenty-five omitted to state the distances of their homes from Phelps' residence. The average distance of the remaining eighty-six is two miles and a third. One of these, an honest and sensible German, persisted in declaring that his reason for discrediting Phelps was, that his heart told him not to believe a man who had been in state prison. All the others testified from a knowledge of Phelps' reputation, before he went to prison, or before or after this prosecution began; twenty-seven of reputation since he came from the prison, and before as well as after the prosecution commenced; eight spoke of his character before he went to prison, and not afterwards; six, of his character while in the state prison, and seventy-seven of his fame, all the way through from 1840 until now. Enough then of Henry Phelps.

"Room for the Leper! Room!"

Few words will suffice for Heman Lake. His part is subordinate. He is only a shadow of Phelps. His testimony an echo. His history, therefore, need not be recited at length. On arriving at manhood, he learned something of engineering, and did nobody knows what till his depraved proclivities bore him into the state prison. There he was a friend and an enemy of Phelps by turns. In the summer of 1849, Lake declined Phelps' invitation to join him, but in the winter following, he accepted his proposition, to work, at he knew not what, for the railroad company, under his direction. He is a "gay Lothario," and having been introduced into Gay's house as a spy for the railroad company, he atones for the unkindness of betraying Gay, by taking the vacant place in the bed of his wife immediately after the husband's arrest, a place which he retains with touching fidelity, when by Gay's death in prison, that wife becomes a widow. Provided with free tickets for himself and paramour, Lake openly traverses the state with her in the railroad cars—while your wives and daughters, pay full charges on the great public thoroughfare. He is well looking, and his fingers and bosom are adorned with rings and golden charms, tokens of manifold and meretricious favor. But he is a man of feeble mind, and executes only indifferently well the plots of Phelps. He testifies from a diary, in which even the facts observed by himself are recorded by his master. In short

he is an illustration of the truth that "a pretty fellow is but half a man."

These are the three chief witnesses of the prosecution—*Gay, Phelps, and Lake.* It is easily seen, that the plot before us is the work of Phelps alone, conceived and contrived for his own gain, and to gratify his own revenge; that the agents of the railroad company, misled and deceived, have furnished him redundant means and subordinates of his own choice. Gay, while living, if not an instrument, was a dupe. Lake is manifestly an instrument in Phelps' hands.

But, gentlemen, the malice of Phelps cannot be understood without knowing the character and circumstances of him who was the object of his revenge. Abel F. Fitch was a native of Connecticut, aged, when he appeared before you, forty-three years. He had a strong mind and considerable education. He came to Michigan in 1837, and, with a fortune belonging to himself and wife, which was small in Connecticut, he was a rich man in the oak openings of Michigan. No man, not even one among all that cloud of accusers which gathered around him here, ever charged him with insincerity or falsehood. He whom you saw brought here as a felon on the 19th of April, was on the 7th of that month, elected, and without a dissenting ballot, as I have been told, justice of the peace and supervisor of his town. He was gentle, just, and humane, the friend and patron of the poor, and their gratitude crowned him with unequalled popularity. You have seen the house of Henry Phelps in Sylvan. You remember how dark and desolate it was—its low, naked walls, its windows glazed with clapboards, its scanty furniture, its doors closed and suspiciously fastened, its master and mistress abroad all over the state, looking up long lost relations, while a malefactor was pursuing his dangerous vocation there, unseen. You remember the half-thatched barn, that was empty of every thing but refuse hay to conceal unlawful things in the manger. You remember the fuel gathered from the waste timber of the railroad, although the dwelling was almost in the midst of the forest. How truly all this illustrates the darkness of the spirit that inhabited there. You have seen, also, the dwelling of Abel F. Fitch, at Michigan Centre, shaded with trees planted by his own hands. It is neat, spacious and elegant. You remember the prairie rose clustering over its piazzas and verandahs. Though

the owner of the mansion was childless, yet its chambers were wont to ring with the merry voices of children. Books, pictures, and musical instruments meet you on every side. The garden exhibits the flowers of every month from early spring till the returning frosts. Ample orchards yield the choicest fruits; a park filled with deer, and a lake in which the wild birds forget their native home, increase the attractions of the domain. That domain extends over five hundred acres; and when you saw it, was covered with wheat ready for the harvest, and cattle, which proved not only the care but the enlightened taste and public spirit of a country gentleman. Was this the home of an incendiary, a conspirator, a felon? Were not these felicities of fortune enough to excite the malice of an enemy to the exaltation of revenge?

Gentlemen, I trust that I have proved that the conspiracy alleged in this case, presents an immaterial issue, and is false in fact; that the case rests on evidence of admissions only, proved by three witnesses, Gay, Phelps, and Lake; that the evidences of those admissions are false, because the facts supposed to be confessed are impossible, while the admissions are unworthy of credit, because they are unsupported by circumstantial evidence, and the witnesses who present them are unworthy of belief, and their testimony is contradictory, and is in conflict with facts incontestibly established. If these positions are true, it follows that this prosecution is the result of a conspiracy against the defendants. You have evidence of that conspiracy in the malicious threats of Wescott and Phelps; in an allusion by Phelps, showing an understanding with Wescott; in a negotiation between Phelps and Gay to predicate a plot on the casual burning of the depot in Detroit, on the 19th of November last, a plot for the ruin of innocent men; in the fraudulent manufacture of those harmless but fearful tokens, contrived to obtain credit for the narrative of Phelps; in the fraudulent transfer of those tokens, by those who fabricated them, to the possession of Gay and of Filley; and in the cunningly devised narrative of Phelps and Lake. But I will not follow that subject further. It belongs to another prosecution—a different tribunal—perhaps, to a distant jurisdiction. It is enough for our present purpose that the defendants are not guilty.

Gentlemen, in the middle of the fourth month, we draw near to the end of what has seemed to be an endless labor. While we have been here events have transpired, which have roused national

ambition—kindled national resentment—drawn forth national sympathies, and threatened to disturb the tranquillity of empires. He who, although He worketh unseen, yet worketh irresistibly and unceasingly, hath suspended neither His guardian care nor His paternal discipline over ourselves. Some of you have sickened and convalesced. Others have parted with cherished ones, who, removed before they had time to contract the stain of earth, were already prepared for the Kingdom of Heaven. There have been changes, too, among the unfortunate men whom I have defended. The sound of the hammer has died away in the workshops of some; the harvests have ripened and wasted in the fields of others. Want, and fear, and sorrow have entered into all their dwellings. Their own rugged forms have drooped; their sunburnt brows have blanched; and their hands have become as soft to the pressure of friendship as yours or mine. One of them—a vagrant boy—whom I found imprisoned here for a few extravagant words, that perhaps, he never uttered, has pined away and died. Another, he who was feared, hated and loved most of all, has fallen in the vigor of life,

> "hacked down,
> His thick summer leaves all faded."

When such an one falls, amid the din and smoke of the battle-field, our emotions are overpowered—suppressed—lost in the excitement of public passion. But when he perishes a victim of domestic or social strife—when we see the iron enter his soul, and see it, day by day, sink deeper and deeper, until nature gives way, and he lies lifeless at our feet—then there is nothing to check the flow of forgiveness, compassion and sympathy. If, in the moment when he is closing his eyes on earth, he declares: "I have committed no crime against my country; I die a martyr for the liberty of speech and perish of a broken heart"—then, indeed do we feel that the tongues of dying men enforce attention, like deep harmony. Who would willingly consent to decide on the guilt or innocence of one who has thus been withdrawn from our erring judgment to the tribunal of eternal justice? Yet it cannot be avoided. If Abel F. Fitch was guilty of the crime charged in this indictment, every man here may nevertheless be innocent; but if he was innocent, then there is not one of these, his associates in life, who can be guilty. Try him, then, since you must—condemn him, if you must—and with him condemn them. But

remember that you are mortal, and he is now immortal; and that before the tribunal where he stands, you must stand and confront him, and vindicate your judgment. Remember, too, that he is now free. He has not only left behind him the dungeon, the cell and the chain; but he exults in a freedom, compared with which, the liberty we enjoy is slavery and bondage. You stand, then, between the dead and the living. There is no need to bespeak the exercise of your caution—of your candor—and of your impartiality. You will, I am sure, be just to the living, and true to your country; because, under circumstances so solemn—so full of awe—you cannot be unjust to the dead, nor false to your country, nor your God.

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